EPSTEIN BECKER GREEN

DEI Compliance Audit Checklist

This checklist is designed to help Human Resources and legal teams conduct a review[1] of key employment-related practices and programs related to diversity, equity, and inclusion (DEI). The goal is to ensure compliance with federal laws, mitigate risks, and align with best practices while avoiding potential legal pitfalls. Follow the steps below to thoroughly evaluate your organization's policies and initiatives.

1. RECRUITMENT AND HIRING PROGRAMS

- ☐ Review eligibility criteria to identify demographic "tiebreakers" or identity-based restrictions (e.g., programs limited by race, gender, etc.).
- ☐ Remove such criteria as "lived experience" if they may act as proxies for protected traits.
- ☐ Shift recruitment focus to skills and performance-based metrics.
- ☐ Assess outreach initiatives to ensure they are neutral and expansive, targeting a wide range of schools, professional organizations, and community groups.

2. LEADERSHIP PIPELINES AND ADVANCEMENT INITIATIVES

- ☐ Evaluate leadership or promotion programs for prioritization of demographic characteristics.
- ☐ Replace demographic-driven eligibility with inclusive and neutral selection criteria.
- ☐ Document merit-based processes for advancement decisions to ensure fairness.

3. COMPENSATION AND PAY EQUITY AUDITS

- ☐ Make sure pay equity audits are led by legal counsel to preserve privilege.
- ☐ Audit pay practices to confirm they are framed appropriately to avoid being misinterpreted as unlawful DEI efforts.
- ☐ Document and verify the neutrality of your compensation review process.

4. AFFINITY GROUPS AND EMPLOYEE RESOURCE GROUPS

- ☐ Review participation policies to confirm groups are open to all employees, regardless of protected characteristics.
- ☐ Ensure groups do not offer exclusive job-related benefits (e.g., special training or executive access) that are available only to members of a specific group.
- ☐ Verify that participation is voluntary and has no impact, positive or negative, on employment-related decisions.

5. TRAINING AND EDUCATION PROGRAMS

- ☐ Evaluate mandatory DEI training for identity-based assumptions or prescriptive cultural competence assessments.
- ☐ Focus training on fostering respectful workplace behavior rather than identity-based mandates.

[1] An employer concerned about exposure to risk associated with diversity, equity, and inclusion-related discrimination claims should consider relying on legal counsel to conduct an audit under the attorney-client privilege to preserve the confidentiality of the process and findings in the event of information requests or discovery demands.

6. SCHOLARSHIPS, INTERNSHIPS, AND FELLOWSHIPS

- ☐ Audit eligibility requirements to avoid tying participation to race, gender, or other protected traits.
- ☐ Incorporate neutral criteria into program design to prevent unintentional exclusion.

7. DISCLOSURE AND REPORTING PRACTICES

- ☐ Review Securities and Exchange Commission (SEC) or other public filings to ensure DEI language has been legally vetted.
- ☐ Align public statements and disclosures with current SEC guidance to avoid unnecessary scrutiny.
- ☐ Evaluate whether DEI activities qualify as reportable risks and document accordingly.

8. FEDERAL FUNDING COMPLIANCE

- ☐ Audit all programs involved with federal funding to confirm alignment with U.S. Department of Justice and U.S. Department of Labor guidance on unlawful discrimination.
- ☐ Verify compliance with the requirements of Title VI and Title IX of the Civil Rights Act of 1964 for federally funded initiatives.
- ☐ Ensure any certifications related to federal grants or contracts are executed only after careful review.

9. REVERSE DISCRIMINATION AND SHAREHOLDER LITIGATION EXPOSURE

- ☐ Assess whether DEI policies could be challenged as harming shareholder value or violating fiduciary duties.
- ☐ Document the legitimate, job-related, and identity-neutral purposes for all DEI initiatives.
- ☐ Maintain evidence of inclusive outreach efforts and ensure there are no demographic quotas in place.

10. NEUTRAL CRITERIA VALIDATION

- ☐ Scrutinize facially neutral policies to confirm they do not act as proxies for protected traits.
- ☐ Document efforts to minimize unintended disparate impacts from criteria such as "cultural competence," "overcoming obstacles," or geographically targeted hiring.
- ☐ Ensure the ultimate intention behind the criteria is job-related and does not indirectly advantage or disadvantage any group based on protected characteristics.

NEXT STEPS

- ☐ Refer to legal counsel to review any identified risks or compliance gaps.
- ☐ Monitor regulatory updates to adapt and evolve your DEI programs as necessary.
- ☐ Schedule periodic reviews to maintain compliance and keep all such reviews well-documented.

By following this checklist, you can strengthen your organization's DEI strategy while remaining compliant with legal requirements and best practices.

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