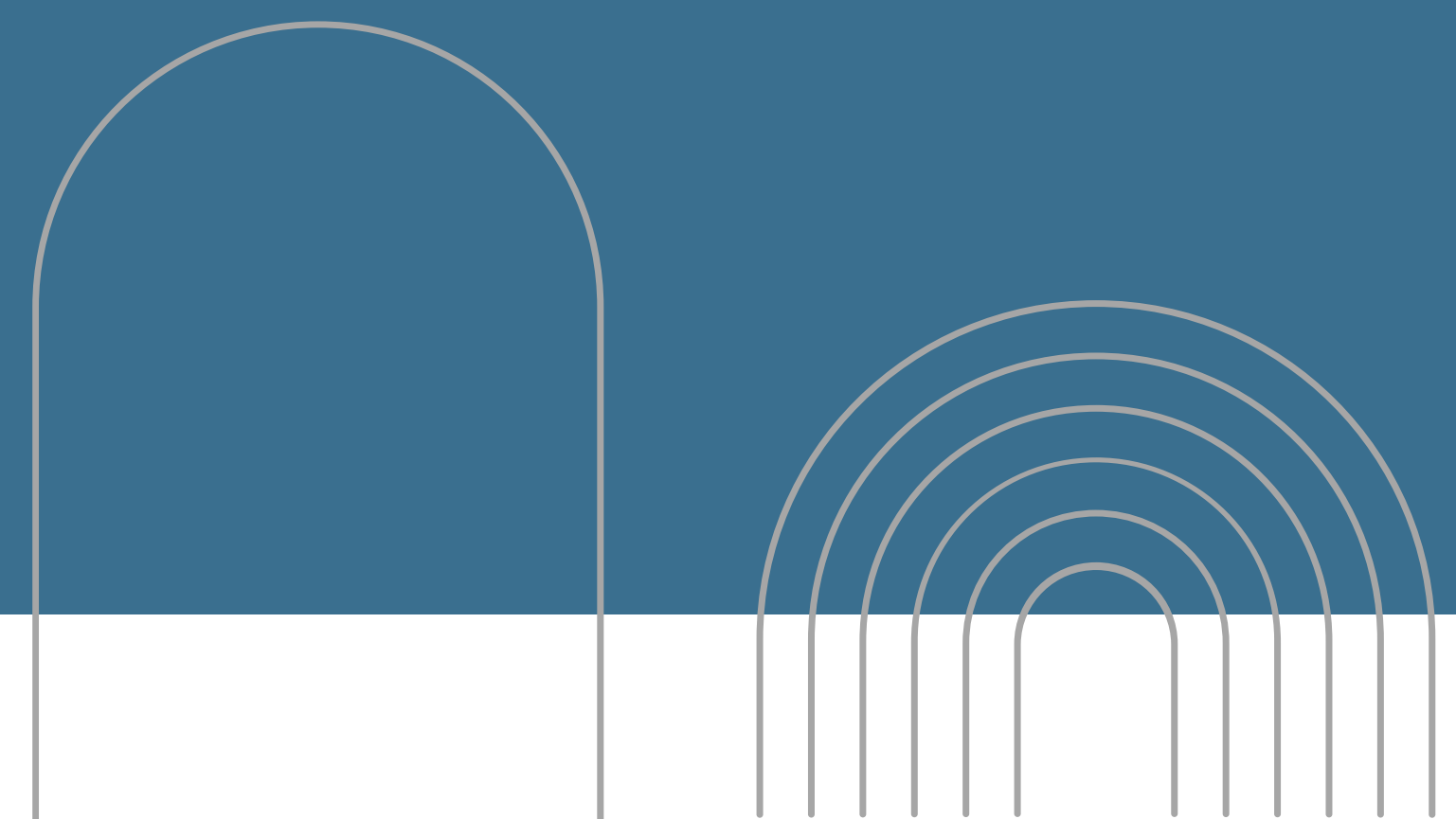


JUSTICE BEYOND PREJUDICE: ELIMINATING BIAS IN CORPORATE LEGAL PRACTICES

Friday, January 31, 2025

*Presented by Diana Cohen &
Kristin Kameen*



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WHAT IS DIVERSITY?



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WHAT IS DIVERSITY?

- **Diversity** is “the practice or quality of including or involving people from a range of different social and ethnic backgrounds and of different genders, sexual orientations, etc.” (Oxford English Dictionary)

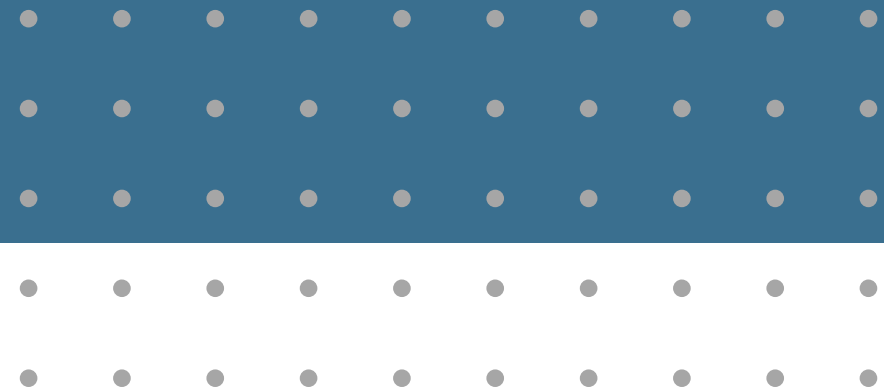
- **Diversity** is “ethnic, socioeconomic, and gender heterogeneity within a group; the combination within a population of people with different backgrounds.” (Black’s Law Dictionary)

- **Diversity** can be more broad to include other protected characteristics including “race/color, religion/creed, sex/gender, ancestry/national origin, gender identity, gender expression, sexual orientation, marital status, medical condition, genetic information, disability, age (40 and over), military or veteran status, reproductive health decisionmaking. (Fair Employment and Housing Act)



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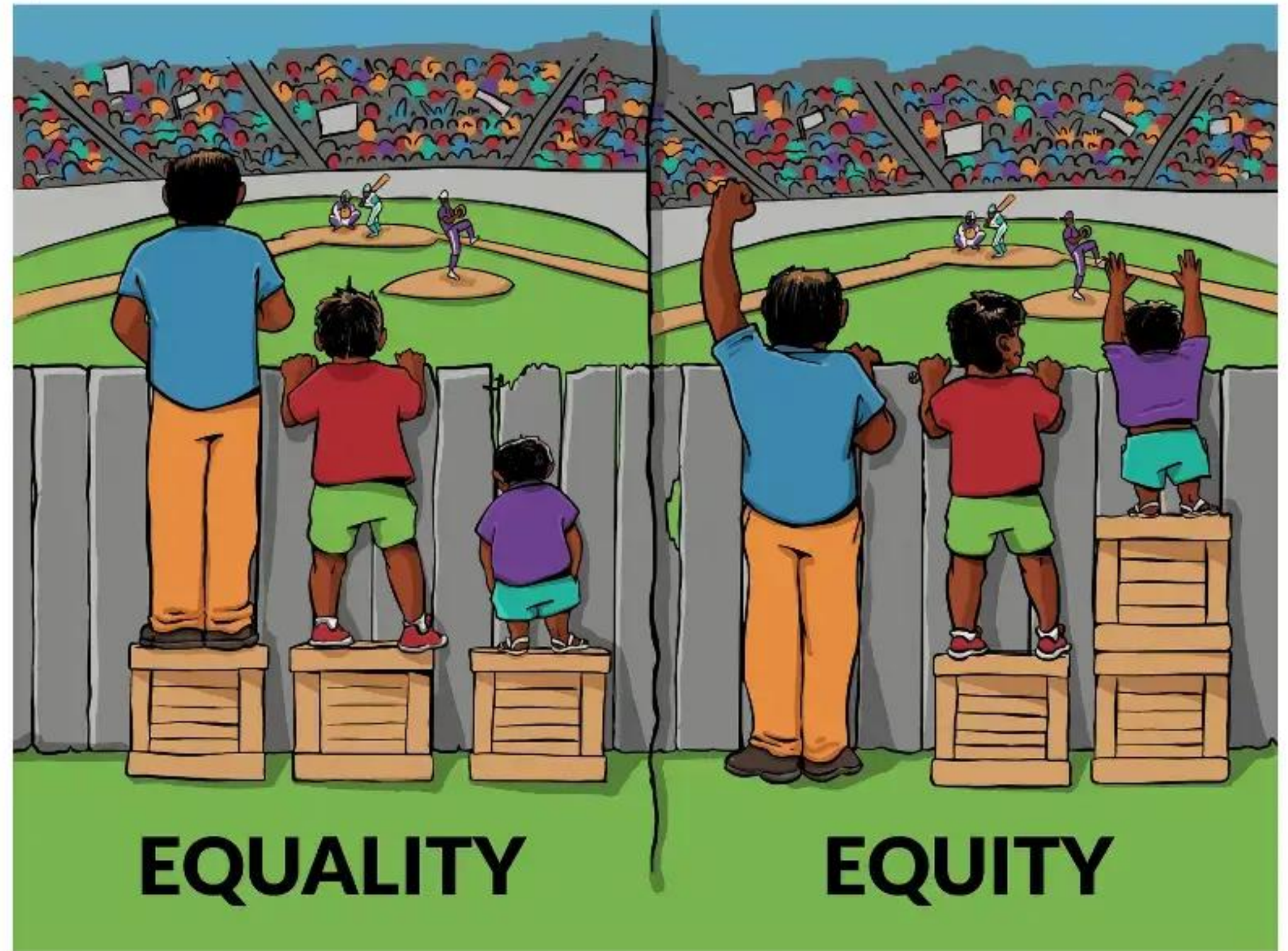
WHAT IS EQUITY?



WHAT IS EQUITY?

- *Equity* is fair treatment, access, and advancement for each person in an organization. (Gallup)

- *Equity* is “fairness; impartiality; evenhanded dealing.” (Black’s Law Dictionary)



WHAT IS INCLUSION?



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WHAT IS INCLUSION?

- ***Inclusion*** is the act or practice of including and accommodating people who have historically been excluded (as because of their race, gender, sexuality, or ability). (Merriam-Webster Dictionary)

- ***Inclusion*** strives for an environment that offers affirmation, celebration, and appreciation of different approaches, styles, perspectives, and experiences. (American Psychological Association)



WHAT IS INTERSECTIONALITY?



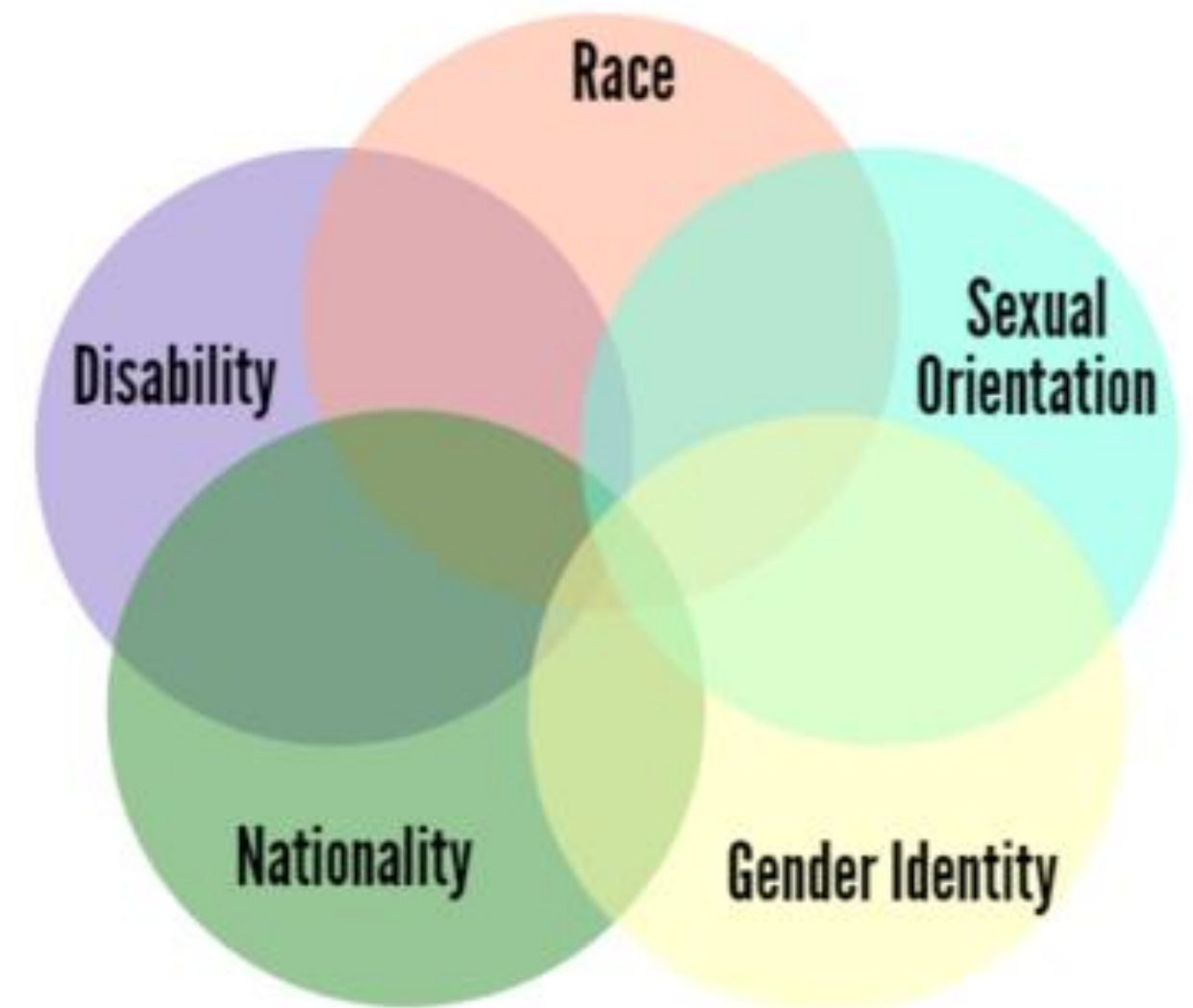
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WHAT IS INTERSECTIONALITY?

- **Intersectionality** is a lens through which you can see where power comes and collides, where it interlocks and intersects. It's not simply that there's a race problem here, a gender problem here, and a class or LGBTQ problem there. Many times that framework erases what happens to people who are subject to all of these things. (Kimberlé Crenshaw).

- *Kimberlé Crenshaw coined the term "intersectionality" in a paper as a way to help explain the oppression of African-American women. Crenshaw's then somewhat academic term is now at the forefront of national conversations about racial justice, identity politics, and policing—and over the years has helped shape legal discussions.*



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WHAT IS UNCONCIOUS BIAS?





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WHAT IS UNCONCIOUS BIAS?

- *Unconscious (or implicit) biases* are social stereotypes about certain groups of people that individuals form outside their own conscious awareness.
- *Unconscious biases are human.*
- The unconscious beliefs we hold about others *do not necessarily align with our conscious declared beliefs.*
- Studies show we generally tend to hold unconscious biases that *favor who are most like us (in-group).*





BOSTON UNIVERSITY STUDY

A father and son are in a horrible car crash that kills the dad. The son is rushed to the hospital; just as he's about to go under the knife, the surgeon says, "I can't operate—that boy is my son!" Explain.



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mrs.kmita 14h

Follow

i never even considered dr. pepper could be a woman.
maybe i'm a bad person

❤️ 1.9K

💬 23

↻ 137

📍 188



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(NOT SO) HYPOTHETICAL EXAMPLES

- CEO of a Fortune 500 company
- Firefighter
- Airplane pilot



TYPES OF UNCONCIOUS BIAS



WHAT IS AFFINITY BIAS?



WHAT IS AFFINITY BIAS?

- The tendency to gravitate toward people similar to ourselves. That might mean hiring or promoting someone who shares the same race, gender, age, or educational background.
- Our biases are influenced by our background, cultural environment, and personal experiences.
- Because bias operates on an unconscious level, we may not even be aware of our biased views or of how they might affect others.
- Affinity bias occurs when we show a preference for people who we perceive to be “just like us.” Any perceived similarity or connection, however big or small, can cause affinity bias: hobbies, preferences, cultural backgrounds, shared past experiences, etc.

WHAT IS CONFIRMATION BIAS?

- The tendency to look for pieces of information that support our pre-existing views and ignore data that contradicts our views.
- When we defer to confirmation bias, our first interactions and experiences of others can go on to influence our lasting, long-term feelings towards them, regardless of their current actions or performance.

WHAT IS ANCHORING BIAS?

The tendency for an individual's judgments or decisions to be influenced by a reference point or "anchor" even if it is not the most important factor.



WHAT IS CONFORMITY BIAS?



WHAT IS CONFORMITY BIAS?

- The tendency to change one's beliefs or behavior to fit in with others. Instead of using their own judgment, individuals often take cues from the group they are with, belong to, or seek to belong to about what is right or appropriate. They then adapt their own behavior accordingly.
- Although conforming to social norms is not bad in and of itself, giving in to peer pressure can cause us to adopt opinions and behaviors that are unethical, illegal, or unfair to those who are not part of the group.

WHAT IS RECENCY BIAS?

- The tendency to place too much emphasis on experiences that are freshest in your memory.
- Recency bias commonly appears in employee evaluations, as a distortion in favor of recently completed activities or recollections.



WHAT IS A SELF-FULFILLING PROPHECY?

A *self-fulfilling prophecy* is a belief about a future outcome that helps to bring about its own fulfillment. This happens because the unconscious expectations that we hold can influence our actions and ultimately cause the initial prediction to become true.



WHAT IS THE PYGMALION EFFECT?

- The *Pygmalion effect* refers to situations where high expectations lead to improved performance and low expectations lead to worsened performance. Although the Pygmalion effect was originally observed in the classroom, it also has been applied to in the fields of management, business, and sports psychology.
- The Pygmalion effect is also known as the *Rosenthal effect*, after the researcher who first observed the phenomenon.

WHAT IS CULTURAL BIAS?

- When we stereotype individuals based on their country of origin, religion, or ethnic background without actually looking into their skills or performance levels.
- Cultural bias involves a prejudice or highlighted distinction in viewpoint that suggests a preference of one culture over another and can be described as discriminative.



WHAT IS HALO EFFECT?

- The tendency to draw a general impression about an individual on the basis of a single characteristic.
- This could look like putting someone on a pedestal or thinking more highly of them after learning something impressive about them.



WHAT IS HORNS EFFECT?

- The tendency to see one bad thing about a person and form a complete view of them based on that single negative attribute, letting it cloud our opinions of all of their other attributes.
- This is the opposite of the halo effect.



UNCONSCIOUS BIAS



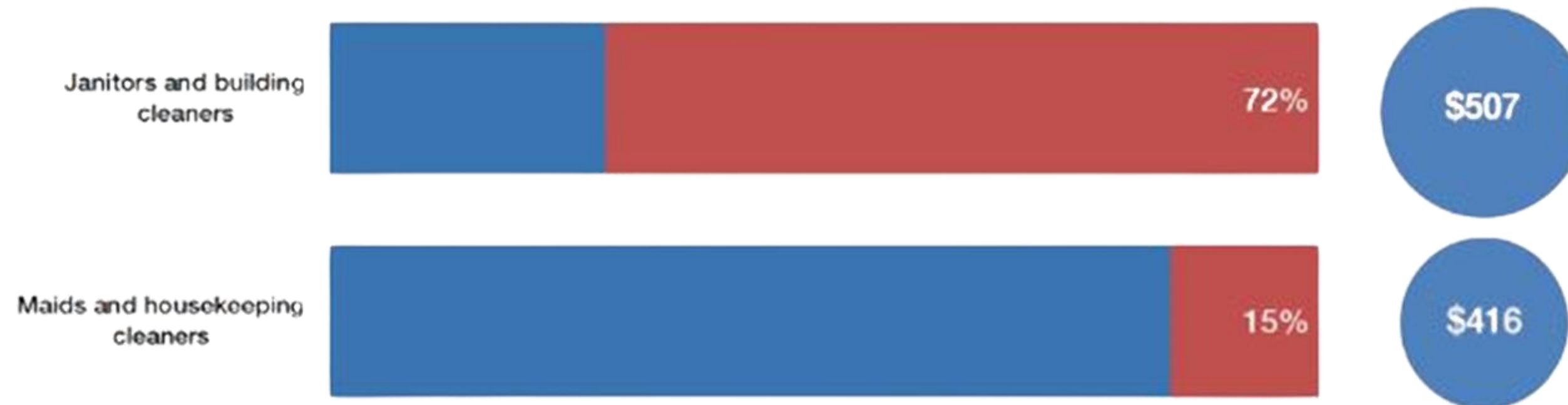
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Implicit Bias and Real-World Impact

Same job, different pay?

Percentage of female workers (blue), male workers (red) and median weekly earning (USD).



Source: US Bureau of Labor Statistics

UNCONSCIOUS BIAS STUDY



MANAGING IMPLICIT BIAS: HOW IT IMPACTS THE LEGAL PRACTICE

- Challenge your first impressions
- How to Mitigate Impact of Implicit Bias
- Challenges of remote work
- Law Practice-specific tips




Rule of Professional Conduct 8.4.1 Prohibited Discrimination, Harassment, and Retaliation

- (a) In representing a client, or in terminating or refusing to accept the representation of any client, a lawyer shall not:
- (1) unlawfully harass or unlawfully discriminate against persons on the basis of any protected characteristic; or
 - (2) unlawfully retaliate against persons.

FIRST IMPRESSIONS

Common nonverbal mistakes made at a job interview
From a survey of 2000 bosses

In a survey of 2000 bosses **33%** claimed that they know within the first **90 seconds** of an interview whether **they will hire someone**



The average length of an interview is **approximately 40 minutes**

Statistics show that when meeting new people the impact is:

- 7%** From what we **actually say**
- 38%** The quality of our **voice grammar** and overall **confidence**
- 55%** The **way we dress, act and walk** through the door

Clothes

- Bright colors** are a turnoff
- 70%** Employers claiming they don't want applicants to be **fashionable or trendy**.
- 65%** Of bosses said **clothes could be the deciding factor** between two similar candidates.

21% — Playing with **hair** or touching face

47% — Having little or **no knowledge** of the company is the most **common mistake** job seekers make during interviews

67% — Failure to make **eye contact**

38% — Lack of **smile**


33% — **Bad posture**

21% — **Crossing arms** over their chest

9% — Using too many **hand gestures**

26% — **Handshake** that is too weak

33% — **Fidgeting** too much



SWAGCT.com

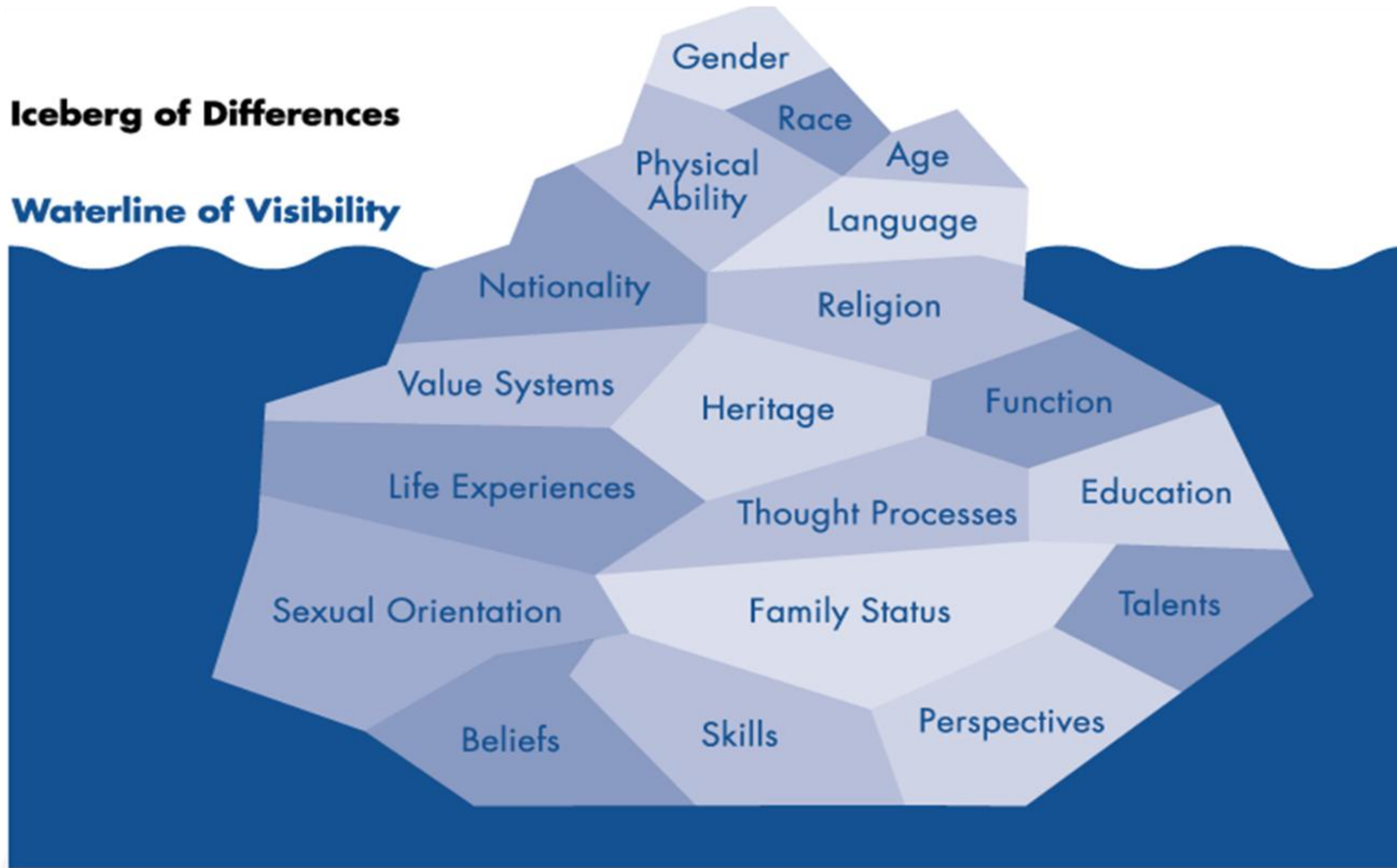


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Iceberg of Differences

Waterline of Visibility



CHALLENGE YOUR FIRST IMPRESSIONS

- Examine your assumptions when assessing others, or making decisions that will impact them, helps bring our biases into conscious awareness.
- Does this person remind me of myself?
- Does this person remind me of anyone else? Is this positive or negative?
- Are there things about this person that particularly influence my impression? Are they actually relevant?
- What evaluations have I already made about this person? Are these grounded in solid information or in my assumptions?
- After answering these questions, step back, pay attention to objective information, and seek evidence that contradicts your prior evaluation. Awareness about your blind spots is important.



How to Mitigate the Impact of Implicit Bias

- Having multiple decision makers mitigates implicit bias
- **Seek feedback and input from others**
What have I missed? What bias may be influencing my perspective? What influences may be in my blind spot?
- **Justify your decisions to yourself and others by considering the following:**
What were the most important factors to make this decision? Why?
What factors did you use? If you didn't consider certain factors, why not?
Why do you ultimately believe this is the decision will lead to the best outcome?

Considerations for a Remote Workforce

- Be aware that people who are “out of sight” can also be “out of mind.”
- Have a system in place to help ensure providing work assignments in an even-handed manner
- Clear and regular communication about workload and expectations is helpful to ensure work is distributed in an equitable and sustainable manner
- Do not assume anyone is more or less available based on their individual life circumstances



Tips to Mitigate Implicit Bias

- If you are not sure who someone is, then ask (avoid assumptions).
- Be respectful of your colleagues, staff, new attorneys, and opposing counsel.
- Promote and encourage different viewpoints.
- Be mindful of blind spots and call out bad behavior.
- Foster an environment where individuals can be authentic.



Current Trends in Corporate DEI Initiatives

- Companies' responses to the legal landscape/Executive Orders – California & other states
- Implications for employers
- Best practices

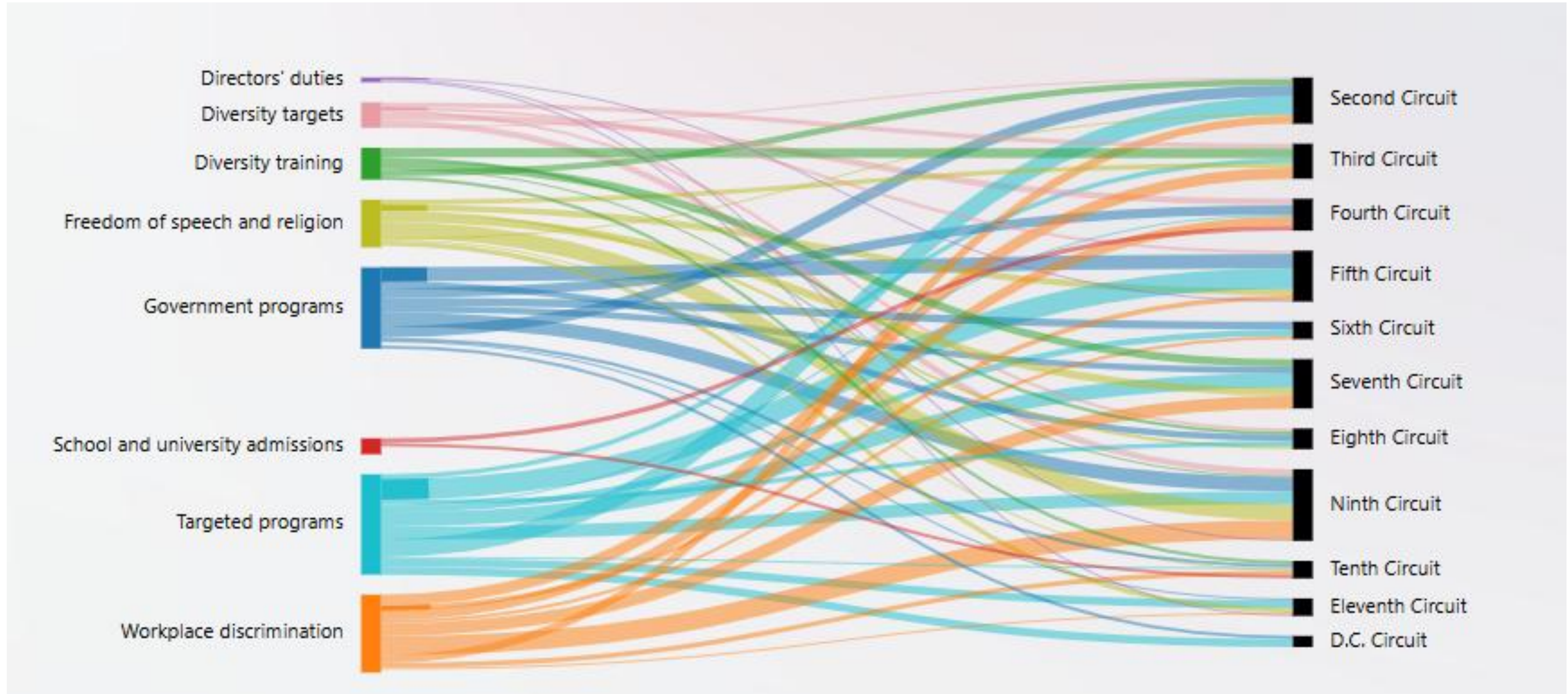


Importance of DEI Initiatives in the Workplace

- Company values & growth
- Creation of an inclusive work environment
- Employees have a sense of belonging and authenticity



Anti-DEI Case Heat Map



Company Responses to the Legal Landscape/Executive Orders

- Curbing or ending DEI initiatives
- Maintaining DEI initiatives
- Reviewing DEI initiatives



Implications for Employers

- Private sector
- Government contractors
- Nonprofits



Best Practices

- Avoid quotas
- Review existing DEI programs
- Focus on inclusion and respect
- Support employee engagement
- Consistent messaging
- Stay informed





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CONTINUE TO LEARN

Take an Implicit Association Test

<https://implicit.harvard.edu/implicit/takeatest.html>



Questions?



THANK YOU