

# Racial Non-Discrimination and Equality

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Discrimination on the basis of race is a fundamental human rights issue. The UN Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, color or national origin. Unfortunately, despite all of the proclamations by the UN and other intergovernmental bodies, as well as specific laws such as the federal Civil Rights Act of 1964, racism remains one of the paramount human rights problems and threatens the livelihood and rights of millions of people in the US and around the world. The death of George Floyd, a black man, while he was in the custody of the Minneapolis police department on May 25, 2020 set off days of large public demonstrations against racial injustice all around the world, often accompanied by vandalism and looting as well as disproportionate police responses that escalated the tensions. At the same time, the US was in the grip of a health pandemic that was difficult for every American, but which created adverse impacts that had fallen disproportionately on blacks and other people of color. Businesses, as they have done in the past in times of crisis, responded with statements of support and philanthropic contributions; however, many believe that more is required and that companies must commit to purging racism from the workplace and committing resources to help communities recover from the unrest and establish the social, economic and political conditions necessary for a just society. Business leaders must seize the challenges and opportunities that have gripped society's attention in the wake of the events of the first half of 2020 by taking a stand and making and fulfilling commitments to action across a broad spectrum of issues and contexts that includes embedding equality, diversity and inclusion in the boardroom, the workforce and all aspects of organizational culture; financial equity and security; community engagement; involvement in the public square through advocacy for racial justice and re-imaging products and services.

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Discrimination on the basis of race is a fundamental human rights issue. The UN Universal Declaration of Human Rights (“UDHR”) proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, color or national origin. The preamble to the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”), adopted by the UN General Assembly in 1965 and entered into force in 1969, includes a reaffirmation that discrimination between human beings on the grounds of race, color or ethnic origin is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same state.<sup>1</sup>

Article 5 of the ICERD calls on states to undertake to prohibit to eliminate racial discrimination in all its forms within their borders and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law and enjoyment of an expansive portfolio of rights including, among other things, the

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<sup>1</sup> Article 1(1) of the ICERD defined the term “racial discrimination” to mean “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.

right to equal treatment before the tribunals administering justice; the right to security of person and protection by the state against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the government as well as in the conduct of public affairs at any level and to have equal access to public service; other civil rights including the rights to freedom of opinion and expression and peaceful assembly and association; and economic, social and cultural rights including the rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work and to just and favorable remuneration.

International human rights standards were originally written by states to create a framework and set of goals for governmental action and it was often argued that such standards did not apply to the private sector. For many, the obligations of businesses with respect to the subjects covered by international human rights standards were limited to compliance with applicable national laws, even if those laws failed to meet international standards. However, as time has gone by ideas have changed, albeit slowly, and there is now growing support for the notion that while the primary duty to protect human rights remains with national governments, businesses also have responsibilities to respect human rights in their operations. The Preamble to the UDHR imposes duties to promote and respect human rights “on every individual and every organ of society”. In 2011 the UN Human Rights Council endorsed the Guiding Principles on Business and Human Rights and Guiding Principle 11 states: "Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved." Importantly, the official commentary to the Guiding Principles endorsed by the UN Human Rights Council makes the following clear: "The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate...[It] exists over and above compliance with national laws and regulations protecting human rights."<sup>2</sup> Businesses have also been called upon to contribute to the Sustainable Development Goals established by UN such as access to basic services, participation in decision making, full and productive employment and decent work, reducing income inequality, ensuring equal opportunity, promoting peaceful and inclusive societies, providing justice for all and building effective, accountable and inclusive institutions at all levels.

Unfortunately, despite all of the proclamations described above, as well as specific laws such as the federal Civil Rights Act of 1964, the US and other states have failed to fully implement the ICERD and racism remains one of the paramount human rights problems and threatens the livelihood and rights of millions of people in the US and around the world.<sup>3</sup> In her book, “Caste: The Origins of Our Discontents”, Pulitzer Prize winning author Isabel Wilkerson wrote: “Our founding ideals promise liberty and equality for all. Our reality is an enduring racial hierarchy that has persisted for centuries.” She goes on to

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<sup>2</sup> <https://www.business-humanrights.org/en/business-human-rights-a-brief-introduction>

<sup>3</sup> A. Bradley, “Human Rights Racism”, *Harvard Human Rights Journal*, 32(1) (Spring, 2019).

argue that racism in America is the byproduct of an unseen skeleton: a caste system that for centuries, even after the formal ending of slavery, has placed African Americans at the bottom rank in a societal hierarchy and repeatedly denies them respect, status, honor, attention, privileges, resources, benefit of the doubt and basic human kindness. For her, the only way to fix the broken American house is to “tear out the plaster, down to the beams, inspect and rebuild the rotting lath” and “recast and reconstruct”.<sup>4</sup>

The death of George Floyd, a black man, while he was in the custody of the Minneapolis police department on May 25, 2020 set off days of large public demonstrations against racial injustice all around the world, often accompanied by vandalism and looting as well as disproportionate police responses that escalated the tensions. As has often happened in the past when such incidents have occurred, businesses large and small were quick to issue statements through social media expressing their concerns about social justice and supporting the Black Lives Matter movement. Many large and well-known brands made commitments to contribute substantial sums to social justice initiatives and supporting minority businesses. For example, Softbank announced intentions to set aside \$100 million for investments in ventures led by minority entrepreneurs and Visa created a \$10 million fund for college-bound black students and agreed to guarantee jobs to those students who satisfied certain requirements. However, a law professor who studies economic justice at Emory University complained in *The New York Times* that: “Most of these corporate statements were put together by the marketing team that was trying not to offend white customers and white employees ... It’s complete B.S. It’s performative.”<sup>5</sup> Other argued that the responses of a number of companies were “hypocritical” and “too little too late” and pointed to examples such as the following:

- While YouTube pledged \$1 million to the cause, media watchdogs quickly pointed out that the platform, like Twitter and Facebook, has historically been slow to remove racist content.
- JPMorgan Chase made it clear that it was “committed to fighting against racism and discrimination wherever and however it exists” even in the face of studies showing its home mortgage practices in Chicago were strongly weighted against black neighborhoods.
- Expressions of support for racial justice by large technology companies were challenged as being at odds with prior practices: Facebook has been criticized for discrimination against black employees and lack of diversity in the workforce; Amazon called for the end to “inequitable” treatment of black people, but the company has been long criticized for low pay, poor working conditions and ignoring the complaints of workers, particularly during the course of the Covid-19 pandemic, and called out for providing software to law enforcement agencies that has been misused to result in racial profiling (Amazon later announced that it would terminate its contracts with the police); and it has been reported that Google has significantly

<sup>4</sup> Quotes from Wilkerson taken from I. Wilkerson, “America’s Enduring Caste System”, *The New York Times Magazine* (July 5, 2020), 26, 33 and 53.

<sup>5</sup> D. Gelles, Corporate America Has Failed Black America, *The New York Times* (June 7, 2020), BU1.

rolled back its diversity and inclusion initiatives to avoid being perceived as anti-conservative.

- The first response of the National Football League was to express support for the demonstrations as a means for expressing “the pain, anger and frustration that so many of us feel”, but it had no answer as to why there was no place in the league for Colin Kaepernick after he peacefully expressed his principles before games.<sup>6</sup>
- Even Nike, which created the controversial marketing campaign in 2018 around the Kaepernick situation and released a new message calling on people to stop pretending that “there’s not a problem in America”, was called out for a lack of diversity among its senior managers.

Other companies, such as Target and Starbucks, steered away from specifically using the word “black” in their messages, preferring instead to refer to “a community in pain” and encouraging “courageous conversations.” And, of course, there are companies that said nothing even though they had built substantial businesses by borrowing from black culture and targeting black consumers with their marketing campaigns.<sup>7</sup>

Floyd’s death, which was quickly followed by the senseless killing of another black man, Rayshard Brooks, in a Wendy’s parking lot in Atlanta by a white police officer, was part of a seemingly endless series of high-profile violent events targeting African Americans (e.g., the fatal shooting of Ahmaud Arbery while on a jog, the killing of Breonna Taylor by police during a raid of her home, Eric Garner, Trayvon Martin and others), also occurred during a health pandemic that has been difficult for every American, although there is evidence that the adverse impacts had fallen disproportionately on blacks and other people of color. For example, local governmental officials reported that job losses in New York City relating to the economic carnage associated with the Covid-19 pandemic have been much more dramatic among people of color: about one in four of the city’s Asian, Black and Hispanic workers were unemployed in June 2020, compared with about one of every nine white workers.<sup>8</sup> There was understandably a longing among large swathes of the country to simply return to “normalcy”, the ways things were before

<sup>6</sup> The evolution of the NFL’s public stance on racial justice issues was clearly impacted by changes in public opinion. After the killing of George Floyd, a Yahoo News/YouGov poll in June 2020 found that a majority of Americans, 52 percent, approved of NFL players following Kaepernick’s lead and kneeling for the national anthem to protect police killings of African Americans, up from just 28% when the group conducted a similar poll in 2016. J. Branch, “As Sports Return, It’s Time To Kneel and Be Counted”, *The New York Times* (July 5, 2020), 28. In July 2020 it was announced that Kaepernick himself had signed a production deal with the Walt Disney Company, the parent company of ESPN, to develop content on race, social injustice and the quest for equity. See K. Draper, “Kaepernick Signs a Production Deal With Disney to Explore Social Injustice”, *The New York Times* (July 7, 2020), B7.

<sup>7</sup> Numerous descriptions of businesses’ responses to the George Floyd killing and subsequent protests have been published and the discussion in the text is based on sources such as J. Bhuiyan, Tech companies say they support racial justice. Their actions raise questions, *Los Angeles Times* (June 2, 2020); T. Hsu, Corporate Voices Get Behind ‘Black Lives Matter’ Cause, *New York Times* (May 31, 2020), <https://www.nytimes.com/2020/05/31/business/media/companies-marketing-black-lives-matter-george-floyd.html>; and How big business can stand up for racial justice: Show, don’t tell, *Chicago Sun Times* (June 5, 2020)

<sup>8</sup> P. McGeehan, “Calamity Looms in New York City Over Job Losses”, *The New York Times* (July 7, 2020), A1, A7.

the health crisis began. However, the protestors and their supporters were sending a signal that the exclusion and disparity of the past would not be good enough and that the country and its businesses must brace and commit themselves to what would be a difficult but necessary path toward a “new normal” grounded in economic justice. In fact, the president of the American Psychological Association argued<sup>9</sup>:

“We are living in a racism pandemic, which is taking a heavy psychological toll on our African American citizens. The health consequences are dire. Racism is associated with a host of psychological consequences, including depression, anxiety and other serious, sometimes debilitating conditions, including post-traumatic stress disorder and substance use disorders. Moreover, the stress caused by racism can contribute to the development of cardiovascular and other physical diseases.”

Related to all this is the reality that almost all of the wealth generated in the stock market during the technology boom that played out in the years before the Covid-19 pandemic flowed to white families, with *The New York Times* reporting that Federal Reserve data has confirmed that typical black households had just one-tenth the wealth of typical white households. There is never a good moment for any event that leads to protests on the scale that were seen in the days and weeks following the George Floyd killing, but the evidence is clear that the black community has realized little in the way of tangible benefits from pledges of equity from Corporate America and that it is time for businesses to finally make a meaningful impact in an environment in which fewer than half of black adults in America had a job, due in part to the devastation to the job market caused by the Covid-19 pandemic, and those black workers that did have jobs made less money than white workers due to the limited types of jobs usually available to blacks (i.e., low paying service jobs) and the failure of businesses to pay black workers the same amount that white workers were paid for the same work.

Exacerbating the crisis is the prediction that 40% of black-owned businesses are not expected to survive the pandemic, often disappearing due to lack of business credit and personal savings that possibly could have kept them afloat until conditions improved. It is important to realize that the comparable rate of shutdown for white-owned businesses was projected to be 17% and that the fate of black-owned businesses was much direr than in Asian and Hispanic communities where the shutdown rates were estimated to be 26% and 32%, respectively.<sup>10</sup> Data published in an article in *The New York Times* indicated that small businesses in majority black and Hispanic neighborhoods would run out of cash faster and Ken Harris, the president of the National Business League, which was founded by Booker T. Washington in 1900, said that most black-owned small businesses “lack the capacity, scale and technical assistance to survive a pandemic” and that “black businesses often don’t have a traditional banking partner” that can help them tap into the

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<sup>9</sup> “We Are Living in a Racism Pandemic” Says APA President (May 29, 2020), <https://www.apa.org/news/press/releases/2020/05/racism-pandemic>

<sup>10</sup> K. Brooks, “40% of black-owned businesses not expected to survive coronavirus”, CBS News (June 12, 2020), <https://www.cbsnews.com/news/black-owned-businesses-close-thousands-coronavirus-pandemic/>



complicated web of federal stimulus programs.<sup>11</sup> As a result, black business owners often failed to receive the funding they requested. All told, the sweeping failure of black-owned businesses as a result of the pandemic will almost certainly exacerbate already existing wealth gaps.

An article in *The Economist* discussed the research of economic historians examining the history of and reasons for racial inequalities in the US, which began with the “original sin of slavery” and extended through sweeping events including the Civil War and the Reconstruction that followed and the so-called Great Migration during the 20<sup>th</sup> century that began when millions of black families left the South for new opportunities in northern cities and then eventually crashed in the wake of white residents’ hostility to new arrivals.<sup>12</sup> The article summed up the events leading to today as follows:

“A large and growing literature links the still-yawning racial gaps in income, employment and wealth to the segregated communities, racial violence and unequal investment that have been a feature of American society for so long. The past, unfortunately, is not even past. Black communities still face obstacles when casting ballots, differential treatment from the police, and unequal access to high-quality public goods, like education. To make real progress toward racial equality in America, it is not just police behavior that needs to change. The cycle of inequality and poor outcomes needs to be broken, and decades of damage remedied.”<sup>13</sup>

Darren Walker, the president of the Ford Foundation, criticized the traditional and predictable response of companies in the face of racism in a quote published in an article in *The New York Times*: “The playbook is: Issue a statement, get a group of African-American leaders on a conference call, apologize and have your corporate foundation make a contribution to the N.A.A.C.P. and the Urban League ... That’s not going to work in this crisis.”<sup>14</sup> The same article led with the headline “Corporate America Has Failed Black America” and went to say: “... many of the same companies expressing solidarity have contributed to systemic inequality, targeted the black community with unhealthy products and services, and failed to hire, promote and fairly compensate black men and women”.<sup>15</sup> Writing in the *Harvard Business Review*, Kramer noted that while taking a public position on social media supporting racial justice is laudable, and arguably overdue in many cases, he hoped that the tragedy in Minneapolis would lead to actions rather than just words from businesses.<sup>16</sup> According to Kramer, surveys indicated that most Americans wanted businesses to respond to the unrest by purging racism from the

<sup>11</sup> L. Leatherby, “Black Business Owners Are Hit Hardest By Virus”, *The New York Times* (June 19, 2020), B4.

<sup>12</sup> Stony the road, *The Economist* (June 13, 2020), 62.

<sup>13</sup> Id.

<sup>14</sup> D. Gelles, Corporate America Has Failed Black America, *The New York Times* (June 7, 2020), BU1.

<sup>15</sup> Id.

<sup>16</sup> M. Kramer, “The 10 Commitments Companies Must Make to Advance Racial Justice”, *Harvard Business Review* (June 4, 2020), <https://hbr.org/2020/06/the-10-commitments-companies-must-make-to-advance-racial-justice>

workplace and committing resources to help communities recover from the unrest and establish the social, economic and political conditions necessary for a just society, and he argued that businesses had duties to act:

“We cannot pretend that most major corporations in America—and their shareholders—have not benefited from the structural racism, intentional inequality, and indifference to suffering that is behind the current protests. Corporate America and the Business Roundtable have an obligation to go beyond tweets and quotes by committing to an agenda that will advance racial equity in meaningful ways.”

Roberts and Washington argued in another *Harvard Business Review* article that businesses and their leaders—from CEOs at the top of the organizational hierarchy down to team managers on the frontline—could ignore the pain and injustice that people of color were suffering from police incidents and the Covid-19 pandemic and must act to overcome mistrust of authority and institutions and create an inclusive environment for everyone.<sup>17</sup> They counseled business leaders to not remain silent in the face of all of the events, telling them that it was essential for them to convey care and concern and not appear to remain neutral with respect to situations of injustice. They also reminded business leaders that they need to avoid being overly defensive, perhaps seeing comments regarding systematic inequalities as personal attacks. They told business leaders that each person of color has his or her own unique experiences with racism that needed to be acknowledged and that they must commit to do their own research using reliable sources to understand the events in order to make clear decisions about the actions that their organizations should take. Finally, Roberts and Washington called on leaders to affirm their employees’ rights to safety and personhood and help them feel protected and entitled to the space that they may need to work through feelings of anger, fear, disenchanted and disengagement from work.

While there has been sweeping and heated dialogue on the root causes of the economic and social problems confronting people of color and the consequences to society in general, many recall that they have heard a lot of this before, such as during the 1992 protests triggered by the acquittal of four white police officers who brutally beat Rodney King in Los Angeles, and worry that the compassion, anger and energy will eventually drift away. Meaningful change takes a long time to occur in elected bodies and local police departments, particularly during a time when the country is so divided politically. However, businesses have opportunities to act quickly if they can remain focused on creating and executing solutions within their organizations and business relationships. While the principal victims of systemic racism are people of color, it is a problem for everyone to the extent that it erodes the fabric of society. Moreover, as one of the observers quoted in *The New York Times* noted: “racial injustice and discrimination are forces that corrupt the corporate mission and core values of a corporation”.<sup>18</sup>

<sup>17</sup> L. Roberts and E. Washington, “U.S. Businesses Must Take Meaningful Action Against Racism”, *Harvard Business Review* (June 1, 2020), [https://hbr.org/2020/06/u-s-businesses-must-take-meaningful-action-against-racism?utm\\_source=linkedin&utm\\_medium=social&utm\\_campaign=hbr](https://hbr.org/2020/06/u-s-businesses-must-take-meaningful-action-against-racism?utm_source=linkedin&utm_medium=social&utm_campaign=hbr)

<sup>18</sup> D. Gelles, Corporate America Has Failed Black America, *The New York Times* (June 7, 2020), BU1.

In an article written over a year before the death of George Floyd, Iyer and Kirschenbaum noted that even though the US was well on the way to a majority being people of color—this was expected to happen by 2045 and a majority of the young people in America were already of color—the situation was dire: “... a majority of people of color in the United States suffer worse socioeconomic outcomes in most aspects of their lives—health, education, career, access to financial services, or experiences with the criminal justice system—than their White counterparts”.<sup>19</sup> They went on to caution that “[i]f status quo remains, and a majority of corporate stakeholders such as customers, employees, and suppliers continue to experience racial inequities, then businesses will suffer from a less productive workforce, missed market segments and fewer suppliers from which to choose.” Iyer and Kirschenbaum urged companies to take to heart the results of research conducted by PolicyLink and FSG in 2017 that found that advancing racial justice could be a source of competitive advantage for businesses and that companies that failed to take into account the sweeping demographic changes taking place in America would miss out on growth opportunities. In their view, companies needed to offer products or services that effectively met the distinctive needs of markets of color, work to reverse the effects of structural racism by strengthening their external business contest and ensure that their internal organizational conditions support this work.

The issues surrounding racial injustice are complex and solutions will not be achieved quickly. In fact, hundreds of years of trying have arguably had little impact. However, prohibitions on discrimination against employees on the basis of race and other characteristics have been mandated by law for decades. Title VII of the Civil Rights Act of 1964, which is usually referred to simply as “Title VII,” applies to any “person” engaged in an industry “affecting commerce” who has 15 or more “employees” for each working day in each of 20 or more calendar weeks in the current or preceding year, as well as to any agent of such a person. Under Title VII, it is unlawful for an employer to fail or refuse to hire or to discharge any individual, or to otherwise discriminate against any individual with respect to compensation, terms, conditions or privileges of employment, because of that individual’s race, color, religion, sex, sexual orientation, gender identity or national origin. It is also unlawful for an employer to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an employee’s status as an employee, because of the individual’s race, color, religion, sex, sexual orientation, gender identity or national origin.

The frustrated people in pain are tired of waiting for politicians to act and are looking to the businesses that provide them with jobs, goods and services to take a leading role in create a more just society. In the past, businesses have been reluctant to get involved and the argument was frequently made that market forces would eventually solve race problems facing American companies; however, in an article published in *The Economist* Walker dismissed this notion and called such views “naïve and in denial about the hold of

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<sup>19</sup> L. Iyer and J. Kirschenbaum, How Companies Can Advance Racial Equity and Create Business Growth (April 8, 2019), <https://www.fsg.org/blog/how-companies-can-advance-racial-equity-and-create-business-growth>



racism on our culture, including our business culture”. In the same article, a consultant argued: “It’s utterly unrealistic for anybody to bi-furcate a societal problem...it’s also a business issue because business exists in society, with employers, customers, suppliers and stakeholders”.<sup>20</sup>

Business leaders must seize the challenges and opportunities that have gripped society’s attention in the wake of the events of the first half of 2020 by taking a stand and making and fulfilling commitments to action across a broad spectrum of issues and contexts that includes embedding equality, diversity and inclusion in the boardroom, the workforce and all aspects of organizational culture; financial equity and security; community engagement; involvement in the public square through advocacy for racial justice and re-imagining products and services. All of this will require more than just the usual changes to policies and training. As pointed out by Kristine Sloan of StartingBloc, companies will need to commit to viewing every aspect of their operations through “a lens of inclusion”. Walker did express some hope for progress: “The unprecedented convergence of health, economic and social crises has happened in a way that I am left feeling hopeful about corporate America realizing the potential of greater diversity.”<sup>21</sup>

## Take a Stand

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Whether or not to take a public stance on political or social issues or on events such as those that have played out following the death of George Floyd is often a difficult decision for companies, many of whom are concerned about alienating certain groups of customers by associating their brands with “controversial” positions on sensitive issues that are dividing society. However, pressure from employees, consumers and investors has been building in recent years for business leaders to explain where they stand and how their values are being incorporated into the decisions that they are making about products, messaging, the way in which their workers being treated and community relationships. While there is a risk of losing those who may not agree with a leader’s positions, companies argue that there is a moral imperative to taking a stand and that the overall health of the business will improve over the long-term as a result of building a stronger personal connection with employees and customers. It is therefore important to consider the process of “taking a stand”, since the words will be closely scrutinized and serve as foundational guidance for all the actions that follow.

As this is written, several weeks have passed since the death of George Floyd and the world is awash in public statements by businesses and their leaders. If someone wanted to say something, he or she should have said it by now. Nonetheless, it is important to consider the process of “taking a stand”, since the words will be closely scrutinized and serves as foundational guidance for all the actions that follow. Whether or not to take a public stance on political or social issues or on events such as those that have played out following Floyd’s death is often a difficult decision for companies, many of whom are concerned about alienating certain groups of customers by associating their brands with “controversial” positions on sensitive issues that are dividing society. However, pressure from employees, consumers and investors has been building in recent years for business

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<sup>20</sup> The great awakening?, *The Economist* (June 13, 2020), 49.

<sup>21</sup> *Id.* at 52.

leaders to explain where they stand and how their values are being incorporated into the decisions that they are making about products, messaging, the way in which their workers being treated and community relationships. While there is a risk of losing those who may not agree with a leader's positions, companies argue that there is a moral imperative to taking a stand and that the overall health of the business will improve over the long-term as a result of building a stronger personal connection with employees and customers. Floyd's death and the protests that followed marked a tipping point for many companies, pushing them to go on the record regarding racial injustice. As explained by Netflix on Twitter: "To be silent is to be complicit. Black lives matter. We have a platform, and we have a duty to our Black members, employees, creators and talent to speak up."

Businesses were understandably under pressure to respond quickly to the situation; however, it is important to avoid being too reflexive and making public statements that are not supported by solid research and thoughtful dialogue with the company's own stakeholders. A good deal of the debate and dialogue on what governments, police departments, communities and businesses should be doing in the wake of the death of George Floyd was focused on "systemic racism" and "racial injustice". A review of the news makes it clear that these are, and will remain, much debated and highly contentious concepts in America, and that there are political leaders who concede that Floyd's killing was wrong while denying that systemic racism exists or is a problem. While business leaders can, like any other citizen, weigh into that debate, their first obligation is to do the research on their own that is required for them to understand the potential flash points. The landscape is quite broad. Consider one well-known definition of "systemic racism" offered by Feagin and used in sociology<sup>22</sup>:

"Systemic racism includes the complex array of anti-black practices, the unjustly gained political-economic power of whites, the continuing economic and other resource inequalities along racial lines, and the white racist ideologies and attitudes created to maintain and rationalize white privilege and power. Systemic here means that the core racist realities are manifested in each of society's major parts [...] each major part of U.S. society--the economy, politics, education, religion, the family--reflects the fundamental reality of systemic racism."

Additional arguments and empirical support for the existence of systemic racism and its adverse impact on people of color can be found in a wide range of sources including surveys compiled by Balko and Cole.<sup>23</sup> Moreover, according to a poll published in June 2020 by Edelman, a public relations firm, nearly two-thirds of Americans, including 57% of whites, were "very" or "extremely" concerned about systematic racism. In addition, big majorities of both blacks and whites expressed hostility toward "performative

<sup>22</sup> J. Feagin, *Racist America: Roots, Current Realities, & Future Reparations* (New York: Routledge, 2010).

<sup>23</sup> R. Balko, "There's overwhelming evidence that the criminal-justice system is racist. Here's the proof.," *The Washington Post* (April 10, 2019), <https://www.washingtonpost.com/news/opinions/wp/2018/09/18/theres-overwhelming-evidence-that-the-criminal-justice-system-is-racist-heres-the-proof/>; and N. Cole, "Definition of Systemic Racism in Sociology." ThoughtCo. <https://www.thoughtco.com/systemic-racism-3026565>.

activism”, or posturing in which companies made flourey statements but failed to take meaningful actions. The respondents also made it clear that silence was not a good option: over half of the whites surveyed expected brands to take a stand on racial justice and over two-thirds of the Republicans who answered said a company’s response to the protests following the George Floyd killing would determine whether its brand kept or gained trust.<sup>24</sup> A June 2020 Harris Poll found that 82% of Americans thought that it was either “very” or “somewhat important” for companies to work on making a positive difference on racial equality and sizable numbers of the respondents called on companies to incorporate their views into advertising, speak out on racial equality, do business with others that share similar standards when it comes to combating racial inequality and contribute to organizations that combat racism. However, only 21% of the respondents to the Harris Poll felt that companies had actually made a “very positive” impact and many in the survey called out companies for failing to do enough to increase diversity in their leadership or making meaningful efforts internally to address racial equality.<sup>25</sup>

However, contrary views should also be sought out and considered in order to anticipate objections to actions that may be proposed by political, community and business leaders. For example, in an essay on lessons for talking about race, racism and racial justice The Opportunity Agenda listed several “counter-narratives” that commonly appear in discussions regarding racism: “racism is ‘largely’ over or dying out over time”, “people of color are obsessed with race” and “civil rights are a crutch for those who lack merit or drive”.<sup>26</sup> An op-ed piece published in the *Wall Street Journal* on June 2, 2020 that was widely circulated on social media agreed that police officer should be held accountable for using excessive force, but argued that there was no evidence of widespread racial bias.<sup>27</sup> Business leaders should not get too bogged down in arguing each of these points, but do need to be mindful of what some others might be thinking as they set out to engage in meaningful conversations to develop responses that can be implemented with broad societal support.

In its guidance on talking about race, racism and racial justice, The Opportunity Agenda counseled leading with shared values including “justice”, “opportunity”, “community” and “equity”, all aspirations that should be universally acknowledged regardless of race. The purpose of this approach is not to avoid difficult discussions regarding race, but rather to focus on potential solutions. The Opportunity Agenda also recommended describing how racial bias and discrimination is a problem for everyone in society and prevents society from realizing its full potential. According to surveys cited by The

<sup>24</sup> The great awakening?, *The Economist* (June 13, 2020), 49.

<sup>25</sup> Americans to Companies: “Do More For Society” (The Harris Poll), <https://theharrispoll.com/americans-to-companies-do-more-for-society/>

<sup>26</sup> Eight Lessons for Talking About Race, Racism and Racial Justice, The Opportunity Agenda (June 2020), <https://www.opportunityagenda.org/explore/resources-publications/lessons-talking-about-race-racism-and-racial-justice>

<sup>27</sup> H. McDonald, “The Myth of Systemic Police Racism”, *Wall Street Journal* (June 2, 2020), <https://www.wsj.com/articles/the-myth-of-systemic-police-racism-11591119883>. See also R. Merry, “What Is ‘Systemic Racism,’ Really?”, *The American Conservative* (June 8, 2020), <https://www.theamericanconservative.com/articles/what-is-systemic-racism-really/>

Opportunity Agenda, eight in ten Americans believe that society functions better when all groups have an equal chance in life. Another way to increase engagement with the issues surrounding racial injustice is to remind others of instances in which they may have felt excluded, a powerful approach given that there is evidence that six in ten American have reported that they have felt discriminated against at one time or another on the basis of race, ethnicity, economic status, gender, sexual orientation, religious beliefs or accent.<sup>28</sup>

In his advice to CEOs and directors on how they can lead on racial injustice, Scott pointed out that while words alone were not a sufficient response to the situation, a company's stakeholders, from employees to customers to community members, expect that its leaders will speak out and clarify the company's position. The tone and content of the messaging will vary, but it should be made clear that the company supports racial justice and is committed to taking tangible and measurable actions to embed equity and diversity into its organizational culture and the actions to be taken with respect to operations and relationships with stakeholders. Like others, Scott argued that statements from company leaders are important cues to everyone in the organization as to what will be expected of them and how they should act.<sup>29</sup>

While business leaders certainly need to look inward to their own experiences and values while working on the company's public position on racial injustice, and must settle on a statement that is aligned with their personal values, they need not work in a vacuum. The actions ultimately taken by the company in furtherance of its position will necessarily be a collective effort involving everyone in the organization. The CEO should create a special working group to develop the company's initial action plans relating to racial justice, ensuring that there is diverse representation in the group who can understand the concerns raised by stakeholders and identify and implement solutions that will truly be seen as responsive by those who have been most pained by past experiences. In addition, leaders should reach to others who can help them understand the underlying issues and provide feedback on the steps that might be taken in formulating and executing the company's commitments. Scott recommended that business leaders (i.e., directors and CEOs) see advice on handling racial inequalities from their peers at other companies, perhaps borrowing from initiatives that those companies have already launched to address one or more of the issues that the company is facing. Companies should also be prepared to turn to qualified and experienced outside consultants and advisors to assist in the process, recognizing that existing internal expertise may not be sufficient.

The leaders' initial public statements regarding the company's position on racial injustice should be amplified in a series of internal events that allow leaders to meet face-to-face with people from all parts of the organization to discuss the stated position and solicit input on specific initiatives that the company should take in order to fulfill its commitments. These events provide an opportunity to reinforce the company's position,

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<sup>28</sup> Eight Lessons for Talking About Race, Racism and Racial Justice, The Opportunity Agenda (June 2020), <https://www.opportunityagenda.org/explore/resources-publications/lessons-talking-about-race-racism-and-racial-justice>

<sup>29</sup> M. Scott, Practical Tips: How CEOs and Directors Can Lead on Racial Injustice, Chief Executive (June 5, 2020), <https://chiefexecutive.net/how-ceos-and-directors-can-lead-on-racial-injustice/>

providing employees with ideas about how they should act and the factors they should consider when make decisions during their day-to-day activities, and also provide employees with a sense of participation in the process. Employees should be encouraged to share their own experiences of racial injustice, both inside the workplace and outside in the world they live in; however, since many employees may be uncomfortable having these conversations in a group setting it is important for the company to develop processes that employees can use to share their experiences anonymously. Including people of color as spokespersons for the company's racial justice initiatives lends credibility to the efforts; however, they should not be asked to defend or justify past missteps, nor should they be prevented from explaining their own pain and discomfort.

At the same time as leaders are meeting with employees, engagement should be continued with external stakeholders who can provide insights on how the company has been handling situations in which racial justice issues might arise. For example, consideration should be given to how the company has treated customers (e.g., have there been complaints of racial discrimination against customers, either in how products and services are provided or in the ability of people of color to readily access the company's products and services). Dialogue should be undertaken with legitimate representatives of community groups to understand how the company is perceived among those who live and work in the neighborhoods where the company operates. Investors should be consulted and are increasingly likely to insist on their portfolio companies establishing and reporting on specific targets relating to diversity and inclusion. Business leaders should also reach out to partners up and down their value chains to understand their responses to the situation. There might be opportunities to collaborate with these partners on racial justice initiatives and companies also want to be sure that they are not exposed to reputational damage from affiliation with businesses that engage in practices that undercut diversity and inclusion.

### **Commit to Action**

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Speaking out is essential and the company needs to provide all of its stakeholders with a clear public statement of its values and overriding commitment to diversity, equity and inclusion. However, words alone are not enough and leaders of the business need to settle on the specific actions that the company will be taking in order to contribute to the cause. Planning for action begins with the internal and external engagement processes used to craft the company's public position on racial justice reforms and then extends to identifying the problems that are most material to its own situation and generate ideas on how the company might be able to contribute its resources to addressing the relevant issues. The next step is the development of commitments accompanied by action plans that include strategies, tactics and metrics. While each company is different, commitments should generally address embedding diversity and inclusion; financial equity and security; diversity and inclusion in the workforce and in the boardroom and C-suite; community investment and engagement and products and services.

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cause. Planning for action begins with the internal and external engagement processes that the company used to craft its public position on racial justice reforms. All of the information collected during those exchanges should be carefully cataloged and analyzed by the company's leaders and the members of the working group formed by the CEO, and the group should prepare a report on the information collected during the engagement process, giving due respect to requests for anonymity, and release it to all relevant stakeholders along with an explanation of how the group weighed the information and use it to make decisions on the steps that will be taken to address and remediate problems of racial injustice in the company's operations. Transparency is essential to building and maintaining the trust needed in order to make meaningful changes. It should be recognized that in some cases the disclosures will be painful, documenting acts or ongoing practices that fall short of the company's aspirations with respect to racial justice; however, it is important for the company to acknowledge its past failures and for leaders to demonstrate that they understand the need to change and explain exactly what they intend to do in order to make those changes.

The engagement process and the organization of the information collected during that process should allow the leaders of the business to identify the problems that are most material to its own situation and also generate ideas on how the company might be able to contribute its resources to addressing issues that require a collective response involving governmental bodies, other businesses, nonprofits and civil society groups. For example, the engagement process, as well as reviews of relevant data already compiled by the company, may clearly identify shortcomings in the company's willingness and ability to recruit and retain people of color. A large number of complaints regarding discrimination and harassment against are also a "red flag", one that should have been noticed and addressed sooner. All this means that the company's action plan must address diversity and inclusion in the hiring process and providing training and take other steps to embed "zero tolerance" of discrimination into the company's organizational culture. At the same time, most companies are able to identify a number of ways to support the improvement of conditions for people of color in the communities in which they are operating and the action plan should include initiatives that are feasible given the company's resources including investments, supporting volunteering by the company's employees and advocacy for governmental policies and public programs that will lead to meaningful social changes.

Commitments to action regarding racial equality and justice are specific to each organization and must take into account stakeholder feedback and available resources and the issues and problems that are most salient and immediate for the company. The menu of commitments presented below is based on suggestions made by Kramer and others and touches on wide swathes of a company's activities internally and in the communities and stakeholder relationships in which they are involved.<sup>30</sup> Some steps appear to be surprisingly simple and quick to initiate, but others will take time and will be accompanied

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<sup>30</sup> See M. Kramer, "The 10 Commitments Companies Must Make to Advance Racial Justice", *Harvard Business Review* (June 4, 2020), <https://hbr.org/2020/06/the-10-commitments-companies-must-make-to-advance-racial-justice>. See also *Six Small But Impactful Ways to Support Social Justice Within Your Organization*, *Forbes Nonprofit Council* (December 6, 2017).

by increases in short-term costs that will need to be explained to investors as being necessary and prudent to create long-term shared value and further the social purpose of the enterprise. For example, it is important to emphasize that studies have shown that closing the racial pay gap would lead to significant improvements in overall economic performance as measured by gross domestic product and that raising entry-level wages improves financial performance by increasing productivity and reducing turnover. In some cases the suggested actions are specific to workers; however, companies should be attentive to opportunities to extend commitments to assist members of the communities in which they are operating as part of an effort to be “good citizens”.

### **Embedding Diversity, Equity and Inclusion**

- **Commit to supporting racial equality in the business by implementing organizational structures and expectations of accountability that embed diversity, equity and inclusion into operations** such as forming a permanent full-time team with relevant experience and expertise drawn from throughout the company (e.g., engineers, data scientists, researchers, designers etc.) to focus exclusively on advancing inclusion and rooting out bias in key activities such as product design, marketing and customer service
- **Commit to anti-racism personnel policies** which make it clear that the company will have “zero tolerance” for racism and will act swiftly to discipline workers who engage in actions that discriminate against co-workers, customers and community members on the basis of race
- **Commit to racial-equity training** to support the success of the policies mentioned above and further understanding of the underlying causes of the problems, making sure that training is required for and provide to everyone in the organization ranging from the directors and members of the executive team to hourly workers
- **Commit to giving employees a voice** by creating and respecting processes for ensuring that hourly employees, women and people of color are represented in all employment decisions and are either represented on, or have full access to, the board of directors

### **Financial Equity and Security**

- **Commit to pay equity** to eliminate shocking disparities in wages paid to people of color (especially women of color), a process that should begin with a wage equity audit and then continue with appropriate adjustments, reviewed and updated on a regular basis, to achieve and maintain fair and equitable pay throughout the organization
- **Commit to paying a living wage** and offering all workers competitive benefits and stable scheduling to avoid disruptions to their incomes and lives
- **Commit to an employee emergency relief fund or low-cost loan program** that workers can access to cover emergency expenses, realizing that a significant percentage of Americans, particularly people of color, do not have sufficient savings

to cope with the unexpected and are often forced to deal with payday lenders that charge outrageous fees or run up high interest credit card debt

- **Commit to paid parental and sick leave** through direct company financial support and/or advocacy for governmental funding, recognizing that people of color face disproportionate challenges in affording unpaid time off from work to care for children and other family members
- **Commit to full health care coverage for all workers and supporting efforts to improve public health and achieve equity and universal coverage in health care** in order to ensure that workers keep more of their paychecks and people of color are better protected against the tragic impacts of health-related challenges such as the Covid-19 pandemic
- **Commit to programs to assist workers with caregiving responsibilities** by implementing flexible work schedules and allowing for telecommuting, thus making it easier for workers to care for children and other family members, and providing on-site child care, all of which can ease stress on workers and help attract a broader and diverse pool of candidates

### Diversity and Inclusion in the Workforce

- **Commit to democratize recruitment processes** by eliminating questions on employment applications and testing that disproportionately exclude people of color (e.g., “felony convictions” and testing for use of marijuana and other drugs not required by law or the nature of the job), eliminating college degree requirements for jobs that do not actually require higher education and developing hiring, mentoring and training programs for young people of color without high school degrees and thus at higher risk for unemployment
- **Commit to transparency in disclosing strategies and results relating to diversity and inclusion initiatives** beginning with collection, analysis and reporting of data relating to recruiting, promotion, wages and other issues as to which bias is likely to arise
- **Commit to expanding diversity in the recruitment pool** by focusing on local communities, dramatically expanding the size of internship programs for people who do not meet traditional educational requirements and committing to setting aside a significant portion of the slots to young people of color and increasing recruiting at historically black colleges and universities
- **Commit to having a diverse workforce that mirrors the customer base** which means ensuring that core business units such as product development, marketing, sales and customer service include employees who can raise concerns about discriminatory, exclusionary or insensitive actions in their areas and in the company’s training and external messaging

### Diversity in the Boardroom and C-Suite

- **Commit to diversity in the boardroom** through purposeful inclusion of women and people of color as members of the board of directors and on advisory boards created

to focus on the company's environmental and social responsibilities and commitments and by requiring that directors hold themselves and management accountable for specific objectives around recruitment, retention and promotion of people of color

- **Commit to tying compensation for the CEO and other members of the executive team to diversity and inclusion metrics** and ensuring that contributing to economic justice is part of the CEO's formal duties and responsibilities

### Community Investment and Engagement

- **Commit to advocating for good** by earmarking a significant amount of your company's lobbying and advocacy budget and related resources to supporting measures that would have a material impact on improving conditions for communities of color (e.g., increasing access to quality education and training, rebuilding infrastructure, ending racial oppression, reforming criminal justice systems and public and mental health systems and rebuilding the safety net) and working to identify and support local leaders who are committed to racial and social justice
- **Commit to supporting employees in their interests in getting involved in community-based programming focusing on racial and economic justice** by implementing programs that allow employees to volunteer for these programs while being paid by the company and contributing cash and other resources to such programs
- **Commit to supporting full participation by workers and community members in democracy** by making Election Day a paid holiday, supporting registration of workers and community members for voting (e.g., setting up tables for voter registration at the workplace), providing assistance to ensure that workers and community members are actually able to vote and hosting forums for candidates to speak to workers and community members and provide their views on economic and social justice issues
- **Commit to rebuilding trust between businesses and communities of color** that has often been breached by past discriminatory practices including intentional failures to provide people of color with access to products and services on the same terms offered to white customers
- **Commit to supporting minority-businesses through investments and preferences in procurement practices** starting with localizing purchasing commitments, developing and using lists of contractors led by people of color and requiring that professional services providers (e.g., lawyers, accountants and bankers) have at least one person of color in a meaningful role on the team working for the company

### Products and Services

- **Commit to offering products and services that effectively meet the distinctive needs of markets of color** by authentically understanding the needs of those markets and the root causes for the failure of those markets to be effectively and fairly served

in the past and investing in designing and redesigning products and services to meet the discrete needs of customers in those markets

It should not be overlooked that while many of the commitments mentioned above are framed in terms of steps to be taken to promote racial justice and equitable treatment for people of color, the goals have a broader resonance and imagine a workplace and broader community in which everyone has more opportunities and a higher quality of life. For example, discrimination and harassment are problems that extend beyond people of color and no business can be as productive and impactful as it could be if workers are struggling because they are not being paid a living wage and are unable to take the time that is necessary for them to care for their own health and the needs of their families without fear of losing their income. Diversity and inclusion in the boardroom and in the workplace promotes innovation that leads to new products and services that create jobs for people from all racial and ethnic backgrounds.

As mentioned above, the company needs to demonstrate to its internal and external stakeholders that the engagement process has been meaningful and driven the leaders of the business to make formal commitments to actions that they are willing to announce and distribute publicly in order to create accountability. A statement of commitments should be prepared and carefully reviewed by the board of directors and directors should take the opportunity to discuss the data and feedback underlying each of the proposed commitments with the members of the working group. Attention to detail is important at this point: the commitments themselves will necessarily be somewhat general and will lack details on specific tactics, timelines and metrics to track performance; however, the company must already have a good idea of the steps that will be taken. Proposed commitments should be discussed with legitimate representatives of key stakeholders so that they understand the process that the company has taken in engaging with stakeholders, conducting internal assessments and prioritizing commitments and customizing commitments to address the company's specific situation. Stakeholders will inevitably want companies to "do more" in relation to the issues that are of greatest concern to them and the goal at this point is to try and make stakeholders recognize that the company takes the issues seriously and is prepared to report on and be held accountable for its actions.

An action plan for each of the commitments needs to be prepared by the working group and should identify the leaders within the organization who will have primary responsibility for overseeing the steps to be taken in order to address each of the issues identified in the plan. The plan should also specify the resources that will be allocated to each issue and the specific performance metrics that will be used to track the company's progress toward fulfilling its commitments. The leaders assigned to each issue need to understand that they will be held accountable for the company's performance and that the success of the plan will be a material factor in the leader's compensation and overall progress within the organization. The action plan should also provide for regular and continuous review including ongoing engagement with relevant stakeholders to gather their input on the effectiveness of the steps taken by the company to address each of the issues. In addition, the company should undertake to issue additional reports to



stakeholders that include the updated stakeholder feedback and data on the performance metrics accompanied by an analysis of how the plan implementation process has worked.

## Embedding Equality, Diversity and Inclusion

Companies need to take steps to embed equality, diversity and inclusion (“EDI”) into their operations, decision making and organizational culture and make those values and norms part of the company’s DNA and the guiding principles for the company’s employment and other business relationships. The first step should be implementing organizational structures and expectations of accountability that embedded EDI into operations such as forming a permanent EDI working group or team with relevant experience and expertise drawn from throughout the company (e.g., engineers, data scientists, researchers, designers etc.) to focus exclusively on advancing inclusion and rooting out bias in key activities such as product design, marketing and customer service. The working group should begin its work with an assessment of the company’s current diversity and inclusion policies and practices in order to get a better idea of where the company stands and which issues and problems should be prioritized for immediate action. Additional steps should include development and implementation of an anti-discrimination policy that includes public affirmations of the company’s commitments and actions relating to diversity and inclusion and providing rigorous racial-equity training to help all employees understand the underlying causes of the problems, how racial discrimination occurs in the workplace and what steps must be taken to change values, norms and behaviors.

Companies need to take steps to embed equality, diversity and inclusion (“EDI”) into their operations, decision making and organizational culture and make those values and norms part of the company’s DNA and the guiding principles for the company’s employment and other business relationships. Changing the organizational culture is a difficult and challenging process that requires patience and attention to all phases of a worker’s journey through the company and the company’s relationships with customers, suppliers and the members of the communities in which the company operates. Some of the steps that need to be taken were suggested by guidance on developing a corporate non-discrimination and equality policy provided by the International Labour Organization<sup>31</sup>:

- Make a strong commitment from the top by signaling that senior management assumes responsibility for equal employment issues and is committed to diversity, thus sending a strong message to other managers, supervisors and workers.
- Conduct an assessment to determine if discrimination is taking place within the organization.
- Set up an organizational policy establishing clear procedures on non-discrimination and equal opportunities; and communicate it both internally and externally.
- Provide training at all levels of the organization, in particular for those involved in recruitment and selection, as well as supervisors and managers, to help raise awareness and encourage people to take action against discrimination.
- Support ongoing sensitization campaigns to combat stereotypes.

<sup>31</sup> Questions and Answers on Business, Discrimination and Equality, International Labour Organization, [https://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS\\_DOC\\_ENT\\_HLP\\_BDE\\_FAQ\\_EN/lang-en/index.htm#Q8](https://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_BDE_FAQ_EN/lang-en/index.htm#Q8)

- Set measurable goals and specific time frames to achieve objectives.
- Monitor and quantify progress to identify exactly what improvements have been made.
- Modify work organization and distribution of tasks as necessary to avoid negative effects on the treatment and advancement of particular groups of workers including measures to allow workers to balance work and family responsibilities.
- Ensure equal opportunity for skills development, including scheduling to allow maximum participation;
- Address complaints, handle appeals and provide recourse to employees in cases where discrimination is identified;
- Encourage efforts in the community to build a climate of equal access to opportunities (e.g. adult education programs and the support of health and childcare services).
- Set up bipartite bodies involving workers' freely chosen representatives, to determine priority areas and strategies, to counter bias in the workplace and ensure that all workers are committed to the organizational goals regarding diversity and non-discrimination.

### Equality, Diversity and Inclusion

Equality, diversity and inclusion are three related concepts that are all essential to a productive and happy workforce and a fair and just society for everyone. Equality comes from equal access to opportunities, free of discrimination; however, the full range of opportunities will only be available when there is respect for diversity and a willingness to include everyone in decisions regarding their lives. A related concept is social justice, which has been described as fair and just relations between an individual and society at large as measured by the distribution of wealth opportunities for personal activity and social privileges.

**Equality:** The guarantee of fair treatment, access, opportunity, and advancement for all while striving to identify and eliminate barriers that have prevented the full participation of some groups. Sometimes referred to as “equity”, this concept is based on the acknowledgement that there are groups that have historically been unfairly under-served and under-represented and that conditions need to be changed in order for all groups, including them, to enjoy equal access and realization of opportunities. Under the law, equality is supposedly “guaranteed” to members of stipulated protected classes based on characteristics such as age, gender, sexual orientation, gender identity, race, color, religion, marital status, pregnancy and maternity and disability and protection extends to actions such as discrimination, harassment and victimization. However, many would argue that the laws that have been passed have not been sufficient to provide equal opportunities for everyone or protect everyone from discrimination.

**Diversity:** Includes but is not limited to race, color, ethnicity, nationality, religion, socioeconomic status, veteran status, education, marital status, language, age, gender, gender expression, gender identity, sexual orientation, mental or physical ability, genetic information, work experience, lifestyles and learning styles. Notably, the concept of diversity, which refers to recognizing and respecting the differences found among all individuals in society, has broadened and expanded beyond the legally protected groups mentioned above as time has gone by and economic, social and political conditions have changed, as evidenced by the inclusion of socioeconomic status.

**Inclusion:** Authentically bringing traditionally excluded individuals and/or groups into processes, activities, and decision/policy making in a way that shares power and ensures equal access to opportunities and resources. Inclusion empowers diversity by ensuring that once the rights of all groups are recognized

everyone has the same access, opportunities and resources to achieve their aspirations. Inclusion also enhances a person's feelings of value, dignity and respect in the workplace and in society generally.

**Sources:** K. Armstrong, What Exactly is Diversity, Equity and Inclusion?, NACE (June 25, 2019), <https://community.naceweb.org/blogs/karen-armstrong1/2019/06/25/what-exactly-is-diversity-equity-and-inclusion/>; UC Berkeley Division of Equity and Inclusion, <https://diversity.berkeley.edu/>; University of Houston's Center for Diversity and Inclusion, <https://uh.edu/cdi/>; <https://www.differencebetween.com/difference-between-equality-diversity-and-inclusion/>; and [https://en.wikipedia.org/wiki/Social\\_justice](https://en.wikipedia.org/wiki/Social_justice)

In its guidance to its members on demonstrating a commitment to diversity and inclusion the National Credit Union Associated recommended the following<sup>32</sup>:

- Organizational leaders including the board of directors, senior officials and personnel managing the daily operations (including supplier relationships) demonstrate their commitment to promoting diversity and inclusion in both employment and contracting and fostering an organizational culture that embraces diversity and inclusion.
- Fair inclusion of minorities, women, or other diverse individuals (e.g., disabled persons, veterans, millennials, older workers or lesbian/gay/bisexual/transgender individuals) in the workforce is promoted through proactive expansion of the applicant pool to include diverse candidates, creation of a culture that values the contribution of all employees and encouragement of a focus on these objectives when evaluating the performance of executives and managers.
- Supplier diversity policies and practices are developed and implemented to expand outreach for contracting opportunities to minority- and women-owned businesses, as well as businesses owned by members of other disadvantaged groups, and provide those businesses with opportunities to bid on certain contracts or procurement activities and otherwise inform them about how to do business with the organization.
- Transparency and communication of information relating to diversity and inclusion efforts (e.g., organizational commitments and plans and related metrics for measuring performance) is promoted through normal business methods including displaying information on websites, in any appropriate promotional materials and in annual reports to stakeholders.
- Adequate time and resources are allocated to ongoing monitoring and evaluation of performance under diversity policies and practices.

Iyer and Kirschenbaum noted that the EDI efforts of companies are often carried out separately from the business units that are primarily responsible for market expansion, the quality of customer service or human resources. They encouraged companies to implement organizational structures and expectations of accountability that embedded EDI into operations such as forming a permanent EDI working group or team with relevant experience and expertise drawn from throughout the company (e.g., engineers,

<sup>32</sup> National Credit Union Association Voluntary Credit Union Self-Assessment Checklist on Best Practices for Demonstrating a Commitment to Diversity & Inclusion, OMB No. 313340193 (Expired 3/31/2019).

data scientists, researchers, designers etc.) to focus exclusively on advancing inclusion and rooting out bias in key activities such as product design, marketing and customer service. Similarly, hourly employees, women and people of color need to be given a voice in the creation, implementation and assessment of all employment-related processes. The working group created to develop the company's commitments to action regarding racial equality and justice should also be involved in organizational change initiatives.<sup>33</sup>

Ideas about the composition of the EDI working group and the manner in which it carries out its responsibilities can be gleaned from suggestions made by Lee on forming a staff-led taskforce, working or committee on EDI.<sup>34</sup> The first suggestion related to the composition of the group and the need to ensure that it includes a diverse team of employees so that discussions and actions will take into account the wide range of viewpoints throughout the workplace. Certainly passion for EDI is an important qualification for serving on the group and anyone who can bring that type of energy to the issues should be considered; however, an effort must be made to identify under-represented groups and not only bring them on to the team but also consider the reasons why employees might be reluctant to participate. In addition to making sure that the composition of the group is racially and ethnically diverse, there should be representation from all levels in the organizational hierarchy and from each of the key business groups or departments.

Another suggestion from Lee was establishing clear goals, roles and relationships in order to define the group's scope of work and how it operates internally and relates to leaders of the organization and others groups that have the authority to implement the actions recommended by the group. In general, members of the working group will still be expected to work on their preexisting day-to-day responsibilities so they will have limited time to invest in the group's activities. As such, consensus should be reached on which EDI issues are most pressing for the company. This process should begin with sharing of stories and experiences among the members of the group, but the group should also go outside its own boundaries to seek input from other employees. Once the issues have been identified, the group needs to consider its internal and external capacities to do the work necessary to make an impact on each issue (e.g., are there members of the group with specific experience and skills that can be leveraged to develop effective solutions for an issue) and make decisions about which of the issues the group can have the most influence on.

The working group also needs to establish boundaries as part of the process of identifying the issues that it will concentrate on and developing proposed solutions for those issues. The working group will typically not have the authority or the control over specific resources to implement that solutions that it might recommend and there needs to be

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<sup>33</sup> L. Iyer and J. Kirschenbaum, How Companies Can Advance Racial Equity and Create Business Growth (April 8, 2019), <https://www.fsg.org/blog/how-companies-can-advance-racial-equity-and-create-business-growth>

<sup>34</sup> Y. Lee, "Diversity, Equity and Inclusion in the Workplace | Tips for Starting a DEI Committee", Idealist (July 18, 2019), <https://www.idealists.org/en/careers/diversity-equity-inclusion-committee>

clarity on just what is expected from the working group and what actions will need to be taken by the leaders of the organization (e.g., directors and members of the executive team) and other departments or business units that are specifically responsible for the policies, processes and actions relating to a particular issue. For example, it is likely that the working group will be grappling with issues relating to improving diversity in the company's recruiting pipeline and the work on that issue needs to be coordinated with the human resources department, which needs to be supportive of the participation by the working group and willing to provide the working group with the data necessary for the group to understand the company's current diversity profile. Provision should also be made for the working group to receive technical assistance from other parts of the company to carry out its activities, such as assistance in creating and disseminating surveys to collect information and setting up meetings with employees outside of the group to hear their concerns and suggestions.

Lee's suggestions were focused on what would initially be a largely volunteer effort organized and supported by the company that depended on employees willing to commit time to the working group in addition to what they might already be doing for the company. In contrast, Iyer and Kirschenbaum called for companies to form a permanent full-time EDI working group or team, meaning that members would be pulled off of their previous assignments and be required and allowed to spend all of their time working on EDI issues with experienced colleagues from other parts of the company.<sup>35</sup> The decision depends on a variety of factors, notably the size of the company and the ability of the company to reallocate resources to a full-time group. It might be best to start with a voluntary group, properly staffed and operating with the explicit and public support of the company's leaders, and then determine how best to integrate the EDI working group into the company's permanent organizational structure. While have a full-time team working on EDI issues is useful, care must be taken to ensure that the team continues to work well with the relevant departments and business units and that steps are taken to embed EDI directly into those groups.

Regardless of how the working group is constituted, one of the first things that it needs to do is conduct an assessment of the company's current diversity and inclusion policies and practices in order to get a better idea of where the company stands and which issues and problems should be prioritized for immediate action. There are a number of ways to organize the areas of inquiry for the assessment; however, the process should surely touch on commitment to EDI from organizational leadership, inclusivity in the workplace, diversity in the supply chain and transparency and communications (see box below for an example of a checklist for assessment of diversity and inclusion policies and practices). The initial assessment is obviously very important and foundational to the company's entire EDI initiative; however, assessments should not be "one off" activities and there must be an organizational commitment to continuous monitoring and assessment on a regular basis, no less frequently than annually.

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<sup>35</sup> L. Iyer and J. Kirschenbaum, How Companies Can Advance Racial Equity and Create Business Growth (April 8, 2019), <https://www.fsg.org/blog/how-companies-can-advance-racial-equity-and-create-business-growth>



## Checklist for Assessment of Diversity and Inclusion Policies and Practices

The National Credit Union Administration (“NCUA”) prepared a voluntary self-assessment checklist for credit unions to use in assessing their practices relating to diversity and inclusion in the workplace and in contracting activities. The questions covered in the assessment tracked the NCUA’s standards for assessing diversity policies and practices: organizational commitment to diversity and inclusion; promotion of fair inclusion of minorities, women or other diverse individuals (e.g., disabled persons, veterans, millennials, older workers or lesbian/gay/bisexual/transgender individuals) in the workforce; development and implementation of supplier diversity policies and practices; transparency and communications and monitoring and assessment. The NCUA recommended that the assessment be carried out by the credit union’s diversity or human resources office and noted that the development and implementation of successful diversity policies and practices often occurs gradually, over a period of time, which means that assessment and corresponding modifications to policies and practices must be a continuous process and carried out no less frequently than annually. The NCUA assessment framework is useful beyond credit unions and the questions below have been adapted from the NCUA framework for use by an organization:

### Commitment of Organizational Leadership to Diversity and Inclusion

Does my organization:

1. Have a written diversity and inclusion policy approved by senior leadership, which includes the board of directors and senior management?
2. Have a senior level official to oversee our diversity and inclusion strategies and initiatives with knowledge of and experience in diversity and inclusion policies and practices?
3. Conduct training and provide educational opportunity on equal employment opportunities and diversity at least annually?
4. Take proactive steps to include a diverse pool of women and minorities or other diverse individual candidates for hiring, recruiting, retention, or promotion of your employees and selection of board member candidates and senior management?
5. Include diversity and inclusion considerations in our strategic plan for recruiting, hiring, retention, or promotion of our workforce?
6. Include diversity and inclusion considerations in our strategic plan in contracting with vendors?
7. Provide periodic (such as quarterly) progress reports on diversity and inclusion efforts to our board of directors or senior management?

### Promotion of Diversity and Inclusion in the Workplace

Does my organization:

1. Implement policies and practices to ensure equal employment opportunities for employees and applicants for employment?
2. Implement policies and practices that create or foster diverse applicant pools for employment opportunities? These may include outreach to minority, women, or other diverse individuals; outreach to educational institutions serving significant or predominately minority, women, or other diverse student populations and participation in conferences, workshops, and other events that attract minorities, women, or other diverse individuals to inform them of employment and promotion opportunities.
3. Communicate employment opportunities through media reaching diverse populations, including publications or professional organizations and educational institutions predominantly serving minority, women or other diverse populations?
4. Cultivate relationships with professional organizations or educational institutions that primarily serve minority, women, or other diverse individuals or organizations?

5. Evaluate our diversity and inclusion programs regularly, and identify areas for future improvement?

6. Use analytical tools, including quantitative (e.g., Employer Information Report EEO-1) and qualitative data, to assess, measure, and track our workforce diversity at all levels, including supervisory and executive ranks, by race, ethnicity, gender or other diverse categories; and the inclusiveness of our employment practices for hiring, promotion, career development, internships, or retention, by ethnicity, gender, or other diverse categories?

7. Hold management accountable for diversity and inclusion efforts, such as ensuring these efforts align with business strategies or individual performance plans?

### **Supplier Diversity**

Does my organization:

1. Have a written supplier diversity policy that provides opportunities for minority and women-owned businesses to bid to deliver business goods and services to us?

2. Have leadership support to incorporate supplier diversity into business planning cycles or initiatives?

3. Encourage by policy that some percentage (e.g., 33%) of our outside contracts solicit bids from qualified minority- and women-owned businesses?

4. Reach out specifically to inform minority- and women-owned businesses or affinity groups representing these constituencies of contracting opportunities and how to do business with us?

5. Use metrics to identify the baseline of and track:

- the amount we spend procuring and contracting for goods and services?
- the availability of relevant minority- and women-owned businesses?
- the amount we spend with minority- and women-owned businesses?
- the percentage of contract dollars awarded to minority- and women-owned businesses by races, ethnicity, and gender as compared to total contract dollars awarded for calendar year?
- the changes related to the above items over time?

6. Implement practices that promote a diverse supplier pool, which may include:

- Participation in conferences, workshops, and other events that attract minority- and women-owned businesses to inform them of our contracting opportunities?
- Maintain a listing of qualified minority- and women-owned businesses that may bid on upcoming contracting opportunities?
- Have an ongoing process to publicize our contracting opportunities?

7. Encourage prime contractors to use minority- and women-owned subcontractors by incorporating this objective in their business contracts?

8. Continuously consider expanding its supplier diversity outreach and practices to include businesses other than minority- and women-owned businesses that are owned by persons who are members of other disadvantaged groups?

### **Transparency**

Does my organization:

1. Periodically compile information about our efforts to enhance diversity and inclusion suitable for publication, which may include:

- Demographic information on workforce composition (such as that found on an annual EEOC report)?
- Demographic information on supplier diversity (contracting activities)?

- Demographic information on the board members and other officials?
  - Information on sponsorships or partnerships with diverse organizations?
  - Other information on our diversity and inclusion efforts?
2. Make the following information public:
- Our diversity and inclusion strategic plan?
  - Our policy on the organization’s commitment to diversity and inclusion in the workforce?
  - Our policy on the organization’s commitment to diversity and inclusion to supplier diversity?
  - Our efforts and progress toward achieving diversity and inclusion in our workforce and contracting activities?
3. Publicize opportunities that promote diversity and inclusion, which may include employment and internship opportunities, contracting opportunities, mentorship or developmental programs for employees and/or developmental programs for potential contractors?

### **Continuous Monitoring and Assessment**

Does my organization:

1. Conduct self-assessments of our diversity policies and practices annually based on standards that have been adopted and implemented by organizational leaders?
2. Modify our diversity policies and practices based on the results of the self-assessment or evaluation of our diversity policies and practices?
3. Publish information pertaining to the self-assessment or evaluation of our diversity policies and practices annually?
4. Publish information pertaining to our efforts with respect to our diversity standards?

**Source:** National Credit Union Association Voluntary Credit Union Self-Assessment Checklist on Best Practices for Demonstrating a Commitment to Diversity & Inclusion, OMB No. 313340193 (Expired 3/31/2019).

A fundamental element of company’s efforts to embed EDI is an anti-discrimination policy that makes it clear that the company will have “zero tolerance” for racism and includes a commitment by the company to take swift action to discipline workers who engage in actions that discriminate against co-workers, customers and community members on the basis of race. In addition to race, the policy should include all other classes recognized and protected by law and broader international human rights standards (i.e., color, religion, disability, national origin, genetic information, sex (including pregnancy), age, sexual orientation, gender (including gender identity and expression), marital status, protected veterans status and citizenship status). The policy should also refer to the scope of employment-related actions and activities that are covered by the protections guaranteed in the policy, such as recruitment, hiring, compensation, promotions, transfers, discipline, demotions, terminations, layoffs, access to benefits and training and all other aspects of employment, as well as to selection of volunteers and vendors and provision of services. In addition, the policy should include the company’s affirmation of its commitments to providing an inclusive and welcoming environment for all employees, customers, volunteers, subcontractors and vendors and the expectation that every employee will show respect for all of the company’s colleagues, customers, volunteers, subcontractors and vendors. Special reference should be made to prohibitions

on harassment that is based on any status protected by law or the company's policies. Anti-discrimination policies should provide employees and others with instructions on how to contact the company to make suggestions and report violations of the policy and should provide assurances to reporting persons that they will not be subject to retaliation. The consequences of violating the policy, including disciplinary actions up to and including termination, should be also be explained.

The development and publication of the anti-discrimination policy should also be used as an opportunity for the company to make a public affirmation of its commitments and actions relating to diversity and inclusion. For example, the policy should include a commitment to creating an equitable workplace where diverse life experiences are respected and valued and an affirmation by the company that diversity and inclusion are paramount to its mission. Companies may incorporate a list of the actions that have been taken to promote both diversity and inclusion, and ensure equal opportunities to all employees. The list should obviously reflect the specific actions taken by the company, but might include, without limitation, the following:

- Modified company facilities for people with mobility challenges
- Guaranteed generous parental leave policy for new parents of adoptive and biological children
- All employees permitted to submit requests for additional days of leave due to religious holidays
- Compulsory sensitivity training for all senior employees and managers
- Attendance to any holiday events is voluntary and nondenominational
- On site/emergency childcare is available to those who need it
- Regular employee surveys gather consensus on attitudes around diversity/inclusion
- Formal leadership training to mitigate biases and increase cultural competency
- Informal discussion sessions and support groups to discuss bias and equity issues
- Collecting resources for educating employees about issues relating to racial equity and justice
- Flexible-work programs for individual mitigating cases including health problems, family and religious commitments
- Blind screening of résumés and diverse interview panels for job candidates
- Recruitment outreach initiatives for more diverse talent pools
- Gender-neutral restrooms and non-binary gender choices on surveys

Many of the actions will have their own policies and procedures which can be referenced in the anti-discrimination policy (e.g., leave policies, flexible work programs and training on bias and equity issues). Consideration should also be given to including a specific commitment to racial equity and justice and embedding a racial equity and justice lens into the company's leadership and staff structure, advocacy and community engagement activities and organizational policies and communications.

The policy should be specifically reviewed and approved by the board of directors and should be widely disseminated including in the company's employee handbook and code

of conduct. In addition, the policy should be incorporated into job announcements, posted on the company's website and included in all of the company's career and diversity-related materials. In order to emphasize the importance that the company places on preventing discrimination and harassment on the basis of race, each employee should be required to deliver a written acknowledgement that he or she has received, read and understood the policy and had an opportunity to ask questions and provides comments relating to the policy. New employees should be required to do the same thing before their employment with the company begins and the acknowledgement should be delivered in person so that a representative of the company is able to directly ask the candidate if he or she understands the policy. When presenting the policy to employees, the company needs to be prepared to explain how situations involving racism will be handled and encourage open communication regarding racial equity in the workplace. Employees need to feel comfortable about reporting racism (including incidents that they see happening to someone else) and processes need to be implemented to facilitate anonymous reporting so that employees do not remain silent due to fear of retaliation.

Personnel policies relating to racial discrimination and harassment in the workplace are just the first step and their effectiveness will depend on the company's commitment to providing rigorous racial-equity training to help all employees understand the underlying causes of the problems, how racial discrimination occurs in the workplace and what steps must be taken to change values, norms and behaviors. Training must be required for and provided to everyone in the organization ranging from directors and members of the executive team to hourly workers. In addition to specific racial equity training, companies should also examine all of their leadership, management and professional development training and activities and make appropriate modifications to ensure that they incorporate the overriding concepts of diversity and inclusion.

Racial equality in the workplace cannot be achieved unless and until everyone in the organization appreciates and respects the diverse experiences of their colleagues and understands that diversity and inclusion will lead to a stronger organizational culture, a vibrant working environment and an engine for innovative products and services that will support a sustainable enterprise. Racial discrimination in the workplace is an extremely sensitive issue that requires painful personal introspection and difficult conversations; however, business leaders need to understand that racism can and will damage their companies in a number of ways. Certainly racial discrimination will expose the company to potential legal liabilities, but even more corrosive is how racism can divide the workforce and undermine morale, teamwork and productivity. In addition, in a world in which news spreads quickly over social media, incidents of racial discrimination can quickly and permanently tarnish a company's reputation and brand, causing it to lose customers and making it more difficult for the company to recruit, engage and retain diverse talent.

Racial equity training involves tackling sensitive issues such as internalized racial stereotypes and "unconscious bias" that may affect decisions that are made within organizations and how people communicate with one another in the workplace. Training sessions should be set up in ways that promote open and safe discussions about racism



and research indicates that companies that are willing and able to facilitate dialogue have been able to build stronger bonds and greater understanding. It should be expected that white people who are challenged on their race-related beliefs during the training sessions will act defensively, often expressing emotions such as fear, anger and guilt. White employees may also have concerns about how proposed diversity and inclusivity actions might undermine their historical “white privilege” and the opportunities and access to resources they have been accustomed to. Concerns from all sides need to be aired, but debating should be avoided, and all employees, regardless of race, need to clearly understand what is at stake and what their lives in the workplace will be like once changes have been implemented. This is the point at which all employees need to be educated and reassured about the benefits to everyone in the company from setting aside inequitable practices.

Training should be accompanied and supported by internal research to identify the areas of possible bias that are specific to the company and using that information to develop potential solutions that can be incorporate into the training and related policies and procedures and metrics that can be tracked over time to assess whether the training has been effective. When conducting the research, the company should search for implicit biases in hiring practices, performance evaluations, work assignment, promotions and compensation decisions. Solutions might include revising job qualifications and descriptions, using software to screen applicants and/or removing names and names of schools from completed applications before reviewing and reconsidering the criteria used to evaluate job performance. Training sessions should also include discussions around specific scenarios in which race might be an issue with the goal of reaching a consensus on objective criteria that can be used for making decisions rather than leaving outcomes to personal judgment that might be based on unconscious bias.

Racial equity training alone will not guarantee success, but it is an essential tool for establishing and continuing dialogue. Certain elements of the training need to be mandatory in order to demonstrate that the company has taken steps to ensure that all employees are aware of their duties under the law and the company’s own internal policies and codes of conduct. Participation in training may also be required by business partners who are concerned about averting reputational damage from being associated with companies that fail to promote a diverse and inclusive workplace free for racial discrimination. According to guidance from the Society for Human Resource Management (“SHRM”), companies should offer additional training and opportunities for dialog beyond the mandatory sessions and not compel attendance since people who do not want to be there will often undermine the value of the meetings by acting hostile or reacting defensively. Training sessions should be led by experienced facilitators and should begin with an explanation of the ground rules for discussions so that everyone feels comfortable sharing their experiences and opinions. SHRM encouraged companies to make learning interactive and experiential, avoiding long lectures from someone in the

front of the room at a podium, and to make sure that everyone walks out of the room with practical steps that can be immediately used to overcome unconscious biases.<sup>36</sup>

## Financial Equity and Security

Black Americans have been crippled by financial inequity and insecurity and the businesses that create jobs and make decisions regarding wages and benefits have a responsibility to make amends as part of any larger push for racial justice. While the economy appeared to be strong by many measures going into the first months of 2020, the reality was that almost all of the wealth generated in the stock market during the technology boom that played out in the years before the Covid-19 pandemic flowed to white families, with *The New York Times* reporting that Federal Reserve data has confirmed that typical black households had just one-tenth the wealth of typical white households. In an *Economic Letter* issued in September 2017, the Federal Reserve Bank of San Francisco reported a sizable gap between the earnings of blacks and whites that has risen over time and that by 2016 the average black male worker earned just 70% of the hourly wage of the average white male worker and the average black woman earned about 82% of what the average white woman earned. The moral and economic arguments for eliminating the shocking disparities described above in the wages paid to African Americans and other people of color should be clear. Companies are legally obligated to have fair pay practices and Article 23(2) of the UN Universal Declaration of Human Rights provides that everyone, without any discrimination, has the right to equal pay for equal work. As such, one of the first steps that a company needs to take in an effort to address racial inequalities and injustice is to commit to pay equity and paying a living wage. In addition, companies should commit to an employee emergency relief fund or low-cost loan program, paid parental and sick leave, full health care coverage for all workers and supporting efforts to improve public health and achieve equity and universal coverage in health care and programs to assist workers with caregiving responsibilities.

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<sup>36</sup> A. Hirsch, "Taking Steps to Eliminate Racism in the Workplace", Society for Human Resource Management (October 22, 2018), <https://www.shrm.org/resourcesandtools/hr-topics/behavioral-competencies/global-and-cultural-effectiveness/pages/taking-steps-to-eliminate-racism-in-the-workplace.aspx>

<sup>37</sup> M. Daly, B. Hobijn and J. Pedtke, "Disappointing Facts about the Black-White Wage Gap", Federal Reserve Bank of San Francisco Economic Letter (September 5, 2017), <https://www.frbsf.org/economic-research/publications/economic-letter/2017/september/disappointing-facts-about-black-white-wage-gap/>

Americans were worse off financially in 2016 than they were in 2000 and that African Americans were the only racial group the Census Bureau identified as being left behind (i.e., White, Asian and Latino households had seen at least modest income gains since 2000). In its 2019 article explaining research on the racial wage gap for men, PayScale summed up the situation succinctly<sup>38</sup>:

“Fifty-five years after the Civil Rights Act banned pay discrimination on the basis of race, equal pay for equal work is not yet a reality. Across the board, we’ve found black or African American men see the largest pay gaps relative to white men. This large disparity in income translates into large and persistent gaps in wealth. This in turn manifests into large and persistent gaps in resources and opportunities for advancement.”

African American workers are not alone; in fact, the available data confirms that the country has what CBS News described as “a job-quality problem that affects nearly half the population” noting in December 2019 that studies have found that 44% of U.S. workers were employed in low-wage jobs that pay median annual wages of \$18,000 and that most of those workers were adults in their prime working years (i.e., 25 to 54). While their medium hourly wage of \$10.22 per hour was almost \$3.00 per hour above the federal minimum wage, it fell well below what was generally considered to be a “living wage” in many parts of the country.<sup>39</sup> Of course, this was the situation before the Covid-19 pandemic and things have only worsened: even the low-paying jobs have gone away and fewer than half of black adults in America still had a job.

Financial inequality among African Americans can be found regardless of their level of education. Many have argued that the key to improving the situation of blacks in the workplace is to provide access to better education; however, Brooks argued in *The New York Times* that this has not led to equality, pointing out that while the percentage of young black adults with a high school diploma had increased from 54% in 1968 to 92% in 2020 and the percentage of young African-American adults that had completed college had also increased from 9% to 23% during that same period the gaps in income and wealth between white and black families remain as large as they were over 50 years ago.<sup>40</sup> Brooks also cited statistics showing that black college graduates earned about 21% less per hour than white college graduates as of 2017 and that while the value of the assets of college-educated whites increased 86% from 1992 to 2013 their black counterparts saw the value of their assets fall by 55% during the same period. According to Brooks, increasing educational opportunities for African-Americans has not only failed to reduce economic disparities but has also not been effective in reducing social disparities, noting that college-educated blacks continue to face racial discrimination on a regular basis in the workplace.

<sup>38</sup> J. Gruver, “Racial Wage Gap for Men”, PayScale (May 7, 2019), <https://www.payscale.com/data/racial-wage-gap-for-men>

<sup>39</sup> Almost Half of All Americans Work in Low Wage Jobs, CBS News (December 2, 2019), <https://www.cbsnews.com/news/minimum-wage-2019-almost-half-of-all-americans-work-in-low-wage-jobs/>

<sup>40</sup> D. Brooks, “Moderates Failed Black America”, *The New York Times* (June 19, 2020), A27.

The moral and economic arguments for eliminating the shocking disparities described above in the wages paid to African Americans and other people of color should be clear. Companies are legally obligated to have fair pay practices and Article 23(2) of the UN Universal Declaration of Human Rights provides that everyone, without any discrimination, has the right to equal pay for equal work. As such, one of the first steps that a company needs to take in an efforts to address racial inequalities and injustice is to commit to pay equity, a process that should begin with a wage equity audit and then continue with appropriate adjustments, reviewed and updated on a regular basis, to achieve and maintain fair and equitable pay throughout the organization. If adjustments are required, they should be made quickly and will often require a re-assessment of the person's actual duties and responsibilities and perhaps a promotion. In addition, if adjustments to the wages of large groups of employees are required, it is important to explain the reasons to other employees who may not be included because they are already being paid fairly. However, problems will not be fully eradicated until the company has dug deeper to identify and address the root causes of unequal pay by taking the following steps recommended by Miller in a 2018 article in the *HR Daily Advisor*<sup>41</sup>:

- Provide better training for hiring teams to reduce or eliminate the ways pay discrimination gets into the hiring process.
- Implement ways across the organization to create fair pay scales or pay grades for each role, where pay is based on the position, the level of responsibility in the role, and the level of experience.
- Set the pay before anyone has even applied, thus reducing the chances of inadvertently paying some candidates less based on their salary history rather than based on the pay that is appropriate for the job.
- Assess other reasons why the pay gap existed in the first place, and put policies in place as needed (e.g., are employees who have taken a leave of absence less likely to received raises or promotions once they return).
- Consider making pay structure at least somewhat more transparent, which forces everyone involved in pay decisions to be more careful about acting fairly.
- Be clear about the requirements for getting a raise or promotion, and be consistent in using the established guidelines.
- Consistently conduct wage audits and compensation assessments to find issues and fix them before they become worse.

In addition to pay equity, companies need to commit to financial equality and security for all of their workers. This involves several steps, beginning with making sure that the company is paying at least a living wage to all of its employees. There are a number of different definitions of a living wage, and various ways to calculate the living wage; however, it is useful to refer to the definition adopted by the founding organizations of the Global Living Wage Coalition that included Fairtrade International, GoodWeave International, Rainforest Alliance, Social Accountability International and UTZ: "... a

<sup>41</sup> B. Miller, "How to Fix Unequal Pay", *HR Daily Advisor* (July 6, 2018), <https://hrdailyadvisor.blr.com/2018/07/06/fix-unequal-pay/>

living wage is the remuneration received for a standard work week by a worker in a particular place sufficient to afford a decent standard of living for the worker and her or his family. Elements of a decent standard of living include food, water, housing, education, health care, transport, clothing, and other essential needs, including provision for unexpected events.”<sup>42</sup>

A living wage is a basic human right: various articles of the UN Universal Declaration of Human Rights provide that everyone who works has the right to just and favorable remuneration ensuring for him or her and his or her family an existence worth of human dignity, and supplemented, if necessary, by other means of social protection and the right to a standard of living adequate for the health and wellbeing of him or her and of his or her family, including food, clothing, housing and medical care and necessary social services. According to the Living Wage for Families Campaign (“LWFC”) in Canada:

“All of society pays the price for low wages: parents lose out on time with their families and communities if they work multiple jobs, children growing up in poverty experience more health issues and are at greater risk of quitting school, and we all pay for higher health care and social service costs.”<sup>43</sup>

In spite of the arguments in favor of a living wage, it has remained a contentious concept and adoption has been slow.<sup>44</sup> Living wage requirements have been mandated in some jurisdictions around the country; however, critics focus on the projected additional costs to employers from increasing their payrolls. Advocates of the living wage have pushed back. For example, the LWFC argued that employers committed to paying a living wage enable their workers to participate fully in their community, spend more time with family and friends and focus better on their work without having to worry about how to pay their bills. The LWFC also surveyed the research on paying a living wage to identify evidence for specific benefits to companies and their workers including lower overtime, absenteeism, and turnover rates, as well as higher rates of employee training; improved staff recruitment and retention; improved staff performance, increased productivity and higher staff morale; more focused staff, which is particularly important when workers are being asked to perform dangerous or highly specific work; improved company reputation and profile; and stronger local economies since low-income earners tend to spend more of their money locally, thus strengthening small and community-focused businesses.

The responsibility to protect human rights such as a living wage lies primarily with states and governments may accelerate the adoption of laws and regulations that would apply to the businesses in their jurisdictions. However, it is far from clear that states will be able and willing to assist businesses with adjusting to the new requirements. As such, companies must take the initiative in planning to fulfill their living wage commitments. While not necessarily true in all instances, larger businesses presumably can increase

<sup>42</sup> <https://www.globallivingwage.org/about/anker-methodology/>

<sup>43</sup> Living Wage for Families Campaign, [http://www.livingwageforfamilies.ca/resources\\_for\\_employers](http://www.livingwageforfamilies.ca/resources_for_employers)

<sup>44</sup> A. Werner and M. Lim, “The Ethics of the Living Wage: A Review and Research Agenda”, *Journal of Business Ethics*, 137 (2016), 433, <https://link.springer.com/article/10.1007/s10551-015-2562-z>



wage levels of their lowest paid workers to a living wage without impacting the “bottom line” and costs of products and services to consumers through transfers of income from senior personnel. In fact, public companies are facing enhanced scrutiny regarding their internal pay gaps and are required to compute and disclose their “CEO pay ratio”, which compares the compensation earned by average workers to their CEOs. As for small businesses, the LWFC recommended that following:

- Embed the living wage as part of the company’s ethos and link it to the nature or quality of the product or service offered by the company, the company’s wider social responsibility activities and strategy and to the company’s worker training and skills development strategies
- Develop an internal communications plan that facilitates understanding of the living wage policy throughout the workforce and builds support at all levels of the organization
- Publicize the company’s living wage policy to demonstrate to all of the company’s stakeholders the commitment that the company is prepared to make to poverty reduction and the enhancing the dignity and wellbeing of all of its workers
- Plan for small initial costs when wages are raised but also long-term savings and increased revenues from the benefits mentioned above including increased staff productivity and being able to offer high product or service quality

Companies should strive to supplement the wages paid to employees by offering them competitive benefits including health insurance (medical, dental and vision), vacation, sick leave, paid time off, paid volunteer time, sabbaticals, retirement plan including company contribution/matching, wellbeing programs, profit sharing, transit benefit allowances, tuition or student loan contribution and disability insurance. Designing a competitive benefits package should be seen as a form of employee engagement focused on improving the experience of employees in the workplace and in other aspects of their relationship with the company. Offering generous benefits to employees demonstrates a commitment to their current and future wellbeing and can have a profound positive impact on the lives of employees and their families. Companies that are known for providing good benefits will also find it easier to recruit and retain the best talent. In addition, a healthy and happy workforce can improve the company’s “bottom line” through gains in motivation, productivity, loyalty and innovation. However, benefits are expensive item for companies, particularly small businesses, and require careful financial planning. Moreover, once a benefit is made available it is difficult to take it away. Adding to the complexity is the need to take into account the preferences and needs of multiple generations working alongside each other in the typical workplace.

When assessing their benefits offerings to employees companies need to be mindful of several areas and issues that have historically been problematic for people of color:

- ***Leave Policies:*** Companies should commit to paid parental and sick leave through direct company financial support and/or advocacy for governmental funding,

recognizing that people of color face disproportionate challenges in affording unpaid time off from work to care for children and other family members.

- **Health Care Coverage:** Companies should commit to full health care coverage for all workers and supporting efforts to improve public health and achieve equity and universal coverage in health care in order to ensure that workers keep more of their paychecks and people of color are better protected against the tragic impacts of health-related challenges such as the Covid-19 pandemic.
- **Caregiving:** Companies should commit to programs to assist workers with caregiving responsibilities by implementing flexible work schedules and allowing for telecommuting, thus making it easier for workers to care for children and other family members, and providing on-site child care, all of which can ease stress on workers and help attract a broader and diverse pool of candidates. Companies should also strive to provide their employees with stable scheduling in order to avoid disruptions to their incomes and lives.

Finally, companies need to address one of the painful byproducts of the long history of pay inequities: the lack of savings and access to personal credit that is rampant within the African American community. These issues were laid bare by the economic fallout from the Covid-19 pandemic, which included widespread unpaid furloughs and outright terminations of people of color. Companies need to commit to employee emergency relief fund or low-cost loan program that workers can access to cover emergency expenses, realizing that a significant percentage of Americans, particularly people of color, do not have sufficient savings to cope with the unexpected and are often forced to deal with “payday lenders” that charge outrageous predatory fees or run up high interest credit card debt.

## Diversity and Inclusion in the Workforce

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Increased focus on diversity has been driven by the growing body of evidence of the strong positive relationships between diversity and business performance and worker satisfaction and changes in the social, cultural and political environment that have heightened sensitivity among employees and other stakeholders to workplace diversity and inclusion. Companies have incorporated diversity and inclusion initiatives into their efforts to fulfill the expectations of various voluntary standards and instruments relating to corporate sustainability and social responsibility. For example, diversity and inclusion are core principles of several of the UN Sustainable Development Goals including gender equality, decent work and economic growth and reduced inequalities, and Goal 10 (reduced inequalities) explicitly calls for efforts to empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status, ensure equal opportunity and reduce inequalities of outcome by eliminating discriminatory laws, policies and practices. Companies’ commitments to racial equality and social justice should include democratizing recruitment processes, being transparent in disclosing strategies and results relating to diversity and inclusion initiatives, expanding diversity in the recruitment pool and having a diverse workforce that mirrors the customer base.

Two important trends have been driving increased focus on diversity, defined by the U.S. Department of Labor as “the infinite range of individuals’ unique attributes and experiences such as ethnicity, gender, age and disability,” and diversity and inclusion

now has a far-reaching impact on businesses that spans brand, purpose and performance. The first trend has been the growing body of evidence of the strong positive relationships between diversity and business performance and worker satisfaction. Diversity enables companies to tap into the knowledge and experience available in different cultures and belief systems. A McKinsey analysis of racial and gender diversity at firms in 15 countries from 2014 to 2020 found that the top quartile of firms measured on employee diversity outperformed the bottom quartile on metrics such as operating profit margins. The McKinsey researchers noted that the returns on diversity were stronger on race than on gender and appeared to be increasing over time. In addition, many studies have provided support for the idea that diverse teams are better at innovation, at least when team leaders are able to successfully build a capability for creative abrasion.<sup>45</sup>

The second trend, no less important than the first, has been a change in the social, cultural and political environment that has heightened sensitivity among employees and other stakeholders to workplace diversity and inclusion. Diversity and inclusion, which require addressing and eliminating long-standing practices of discrimination in activities relating to the employment relationship, are now treated as issues of fairness, social justice and human rights.<sup>46</sup> For example, the International Labour Organization (“ILO”) has declared that freedom from discrimination in employment is a fundamental human right and that it is essential for workers to be able to choose their employment freely, develop their potential to the full and reap economic rewards on the basis of merit. There are numerous international labor standards addressing discrimination in relation to access to education and vocational training, access to employment and to particular occupations and the terms and conditions of employment. For example, the 1998 ILO Declaration on Fundamental Principles and Rights at Work calls on all member States to promote and realize within their territories the right to be free from discriminatory employment practices and references rights and obligations created in earlier fundamental conventions such as the Discrimination (in Employment and Occupation) Convention, 1958 (No. 111) (promoting the principle of equal pay for work of equal value) and the Equal Remuneration Convention, 1951 (No. 100) (promoting equality of opportunity and treatment in employment and occupation).<sup>47</sup>

Companies have incorporated diversity and inclusion initiatives into their efforts to fulfill the expectations of various voluntary standards and instruments relating to corporate sustainability and social responsibility. Diversity and inclusion are core principles of several of the UN Sustainable Development Goals including gender equality, decent work and economic growth and reduced inequalities, and Goal 10 (reduced inequalities) explicitly calls for efforts to empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or

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<sup>45</sup> The great awakening?, *The Economist* (June 13, 2020), 49.

<sup>46</sup> J. Bourke, S. Garr, A. van Berkel and J. Wong, “Diversity and inclusion: The reality gap”, Deloitte Insights (February 28, 2017), <https://www2.deloitte.com/us/en/insights/focus/human-capital-trends/2017/diversity-and-inclusion-at-the-workplace.html>

<sup>47</sup> International Labour Standards on Equality of opportunity and treatment, <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/equality-of-opportunity-and-treatment/lang--en/index.htm>

economic or other status, ensure equal opportunity and reduce inequalities of outcome by eliminating discriminatory laws, policies and practices. The OECD Guidelines for Multinational Enterprises include provisions addressing a wide range of employment-related practices including prohibitions on discrimination, occupational health and safety, fair standards of employment and industrial relations and training to improve skill levels. Section 6.3.10 of the ISO 26000 Social Responsibility Guidance Standard is concerned with organizational commitment to the ILO's "fundamental principles and rights at work" discussed above.<sup>48</sup> Companies committing to the UN Global Compact bind themselves to the elimination of discrimination in respect of employment and occupation.

Companies should act immediately to take stock of where they stand in terms of diversity among the members of the workforce. In order to determine where to prioritize the steps necessary to improve fairness and equality throughout the organization, companies need to collect data relating to recruiting, promotions, salaries and other issues that can be used to identify situations in which the company's practices may be biased. Surprisingly, many companies do not track the necessary data, which means that their leaders may not understand that problems exist with respect to workplace diversity or gender and racial gaps in pay. This is not a simple process at the very beginning because it will require going back in time to assess a large number of employment-related decisions including decisions made by persons who are no longer with the company. As the data is collected steps should be taken to create a permanent system so that performance can easily be tracked and measured in the future.

At the same time the information described above is being collected the company should analyze the skill sets of the current group of employees and the skills and experience that the company would ideally like to have throughout its workforce. This is important because the drive toward greater diversity must be aligned with the business needs of the company. Companies cannot sustain their drive toward diversity unless they either focus their recruiting efforts on underrepresented groups that have the skills and experience that the company requires or commit to providing people of color (and everyone else in the company) with the training and other support necessary for them to be successful in their professional development with the company. The company should also work to have a better understanding of the relationship between its customer base and the diversity of its workforce. It is important to have a diverse workforce that mirrors the customer base, which means ensuring that core business units such as product development, marketing, sales and customer service include employees who can raise concerns about discriminatory, exclusionary or insensitive actions in their areas and in the company's training and external messaging (e.g., advertisements that are racist or culturally inappropriate). In addition, increasing diversity in the workforce allows the company to credibly pursue new business opportunities that advance racial equity by recognizing and serving the specific needs of markets of color and avoid products or services that are discriminatory or exclusionary towards gender or race.

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<sup>48</sup> Section 6.4.2.1 of ISO 26000 references various sources of fundamental principles relating to labor practices and social responsibility including the ILO's 1944 Declaration of Philadelphia, the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.

Achieving and maintaining diversity and inclusion in the organization is a challenging project and requires a plan that can be used to guide the company through the necessary steps and establish milestones that can be referred to in order to assess whether the measures taken have had the desired and expected impact. A diversity and inclusion plan should begin with a statement of the company's mission, namely growing a diverse workforce in an inclusive work environment, and an affirmation of the company's commitment to the fundamental values of diversity, equality and inclusion. The plan should then set out specific strategic goals with respect to diversity and inclusion, such as assembling a workforce that reflects all segments of society, establishing an inclusive and engaged organizational culture, promoting diversity in the company's supply chain and participating as a contributor and advocate in community-based efforts to promote social justice, equality and economic wellbeing. Each goal should have several specific objectives (e.g., with respect to achieving diversity in the workforce, one of the objectives should be eliminating institutional barriers to equal employment opportunities) and strategies for achieving each objective. Finally, the plan should incorporate metrics that can be referenced to track performance for each of the objectives and the company's overall progress toward achieving its goals relating to diversity and inclusion. In order for the plan to be relevant and effective it needs to be based on solid information collected and analyzed in advance relating to the company's current diversity and inclusion profile and the specific concerns of the company's employees, customers and other stakeholders. The company should prioritize its goals and objectives giving greater weight to initiatives that address the most immediate problems and/or are likely to have the strongest immediate positive impact on improving diversity and inclusion.

An article in *The Economist* included suggestions from consultants on how best to create an effective diversity strategy for African Americans in the workplace. They noted that while investing in skills development programs to improve the competitiveness of employees of color was useful, companies should not rely on traditional arguments of meritocracies to resolve racial inequalities inside organizations, suggesting that forces of systemic racism were too strong inside most companies. They argued that the better answer to the problems was to explicitly focus on race in diversity and inclusion efforts, taking care not to dilute the plans by lumping race in with gender and other issues. The consultants recommended creating a diversity strategy specifically for black employees that included clear and consistent standards, goals and targets for promotion and attraction. Responsibility and accountability for the strategy should be placed in the hands of the CEO, not offloaded to outside consultants or a chief diversity officer, and if goals and targets are missed there need to be explanations. For example, if promising African American managers are leaving the company, an assessment needs to be made as to whether they were provided with sufficient mentoring and clear and fair feedback on how they could further their professional development.<sup>49</sup>

The diversity and inclusion plan is obviously an important internal roadmap for the company; however, the company should also commit to transparency in disclosing its

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<sup>49</sup> The great awakening?, *The Economist* (June 13, 2020), 49.



diversity and inclusion strategies and results to stakeholders as part of the company's overall reporting on social responsibility issues. News reports indicate that only 40% of larger companies are transparent about the gender and racial makeup of their employees and CEOs often balk at setting and announcing measurable targets relating to diversity in their workforces. Given the pressures for change, this lack of clarity cannot continue and companies must be prepared to provide data relating to recruiting, promotion, wages and other issues as to which bias is likely to arise and commit to measurement and reporting on meaningful indicators of diversity and inclusion. Reporting must be continuous and regular so that stakeholders can measure and assess progress or backsliding and should include commentary that goes "beyond the numbers" so that stakeholders have a better understanding of the actions that the company has taken and the reasons for their success or failure. The National Credit Union Administration argued that transparency regarding an organization's diversity and inclusion initiatives including commitments and plans and related metrics for measuring performance sends an important signal to a broad constituency of current and potential employees, customers, suppliers and the communities in which the organization operates.<sup>50</sup> Companies need to be bold and fearless about their reporting in this area and accept that mistakes may be made and that stakeholders will likely be forgiving within reasons as long as companies move quickly to address problems and grievances.<sup>51</sup>

Companies can do a number of things to expand diversity in the recruitment pool including focusing on local communities, dramatically expanding the size of internship programs and committing to setting aside a significant portion of the slots to young people of color and providing them with mentors and support and a clear path to full-time employment in jobs that come with real development and progression opportunities and increasing recruiting at historically black colleges and universities. Internship and similar programs can be particularly important and impactful if they are credibly broadened to promote diversity and provide opportunities for people who do not meet the traditional educational requirements; however, care should be taken to ensure that such programs are not used as a means for avoiding fair compensation and benefits. A number of new programs were announced in the wake of the outcry following the death of George Floyd including Visa's commitment to create a \$10 million fund for college-bound students and guarantee jobs to those students who satisfied certain requirements.

Other important recommendations to companies seek to democratize the recruitment process by eliminating questions on employment applications and testing that disproportionately exclude people of color (e.g., "felony convictions" and testing for use of marijuana and other drugs not required by law or the nature of the job), eliminating college

<sup>50</sup> National Credit Union Association Voluntary Credit Union Self-Assessment Checklist on Best Practices for Demonstrating a Commitment to Diversity & Inclusion, OMB No. 313340193 (Expired 3/31/2019).

<sup>51</sup> Emerging sustainability reporting frameworks, such as the Global Reporting Initiative, include various metrics that relate to aspects of diversity, equality and inclusion such as the implementation of policies and programs promoting equal opportunities; the ratio of basic salary and remuneration of women to men by employee category, by significant locations of operation; significant indirect economic impacts, including the extent of impacts; and the ratio of basic salary and remuneration of women to men by employee category, by significant locations of operation.



degree requirements for jobs that do not actually require higher education and developing hiring, mentoring and training programs for young people of color without high school degrees and thus at higher risk for unemployment. The initial goal of these changes is to bring more people of color into the workplace; however, the jobs in question are typically entry level and thus not necessarily optimal from a long-term perspective and it is therefore important to be sure that these jobs come with a living wage and are accompanied by eligibility for other skills development and educational programs sponsored by the company. For example, companies should commit to support all of their employees who do not have a high school diploma in their efforts to complete their coursework and then provide them with counseling and financial assistance relating to additional education.

Recruiting and retaining people of color should be part of a broader initiative to increase diversity throughout the organization. The chances for success in a diverse world are enhanced when a company is able to call on the experiences and viewpoints of different races, religious backgrounds, genders, nationalities and physical abilities. A diverse workforce is a fertile ground for innovation and new ideas and can lead to the company being recognized in the marketplace and communities as a credible champion of diversity and economic equality. Achieving diversity will require attention to several types of strategies and tactics. For example, companies will usually need to expand the geographic scope of their recruiting activities in order to reach groups that may be underrepresented in the current workforce. Changing and maintaining the organizational culture of the company is also essential so that workers from “different” backgrounds feel welcome and accepted once they join the company. This will require that companies provide diversity training and opportunities for workers from different backgrounds to work together. In particular, companies need to focus on retention to ensure that their diversity initiatives do not stagnate, which means taking special care to regularly engage with women, people of color, workers with disabilities and older workers to identify and understand potential problems before people decide to leave the company. Also important is seeking and achieving diversity among the holders of senior positions in the company, which not only expands the lens used for strategic decisions but also provides workers at lower levels with role models within the company and a sense that the company is open to supporting their professional development goals through promotions.

## **Ideas for Promoting Workplace Equality, Diversity and Inclusion**

### **Recruiting Strategies for Equality and Diversity**

- Create a company equality, diversity and inclusion (“EDI”) policy and explicitly integrate EDI into the company’s mission statement and external communications
- Expand the scope and diversity of the company’s recruiting efforts and promote the company’s commitment to EDI to potential candidates
- Initiate equal pay policies across the organization and make sure they are always applied in the interview process and when job changes/promotions occur (i.e., no negotiations or exceptions)
- Make initial candidate screening a blind screening and have a structured interview process that includes a diverse group of employees
- Ensure that onboarding, initial training and the first months on the job are smooth for all new hires
- Develop and implement specific hiring practices for veterans and to avoid ageism

- Provide socioeconomic assistance to supplement salaries to assist employees with achieving a viable standard of living (e.g., affordable housing option and employee cafeterias)

### **Workplace Strategies to Improve Morale and Inclusivity**

- Publish signage and notification of EDI policies and keep company language gender-neutral
- Have open lines of communication where EDI issues can be discussed and improved upon
- Provide sensitivity and unconscious bias training and training on team building and communications styles
- Support the creation of affinity groups within the company and encourage management involvement with those groups
- Allow groups, or the company, to do community outreach and encourage management involvement with outreach activities
- Initiate corporate-wide culture change for diversity and inclusion
- Ensure diversity among participants in all company committees and working groups and inclusivity in the processes of the processes of such committees and working groups
- Bring in third parties to observe interactions in the workplace and solicit input from external stakeholders (e.g., customers and community members)
- Instill a PTO day for voting
- Proactively make reasonable allowances for religious practices in the workplace
- Hand out health and wellness reimbursements and offer tuition reimbursement and support for continued education
- Offer flexible PTO and reasonable opportunities for remote working and telecommuting
- Provide subsidized child care or on-site daycare for parents or those with guardianship of children and offer wide ranging healthcare options to cover those with domestic partners or who have the care of elder relatives
- Facilitate employee mentorship programs
- Have a formal and transparent process for moving up in the company and provide career development for employees with varied backgrounds
- Have regular company meetings to keep everyone informed and up-to-date on happenings, and get a pulse of the company
- Offer flexible parental leave for new parents
- Offer mental health resources

**Source:** Adapted from 55+ Ideas to Promote Inclusion and Workplace Diversity in 2020 (February 28, 2019), <https://bestcompaniesaz.com/ideas-for-inclusion-and-diversity/>

### **Diversity in the Boardroom and C-Suite**

America's largest companies have done poorly with respect to bringing black women and men into meaningful leadership roles and companies need to commit to diversity in the boardroom through purposeful inclusion of women and people of color as members of the board of directors and on advisory boards created to focus on the company's environmental and social responsibilities and commitments. In addition, all of the directors, regardless of their race, need to hold themselves and management accountable for specific objectives around recruitment, retention and promotion of people of color, and commit to tying compensation for the CEO and other members of the executive team to diversity and inclusion metrics.

*The New York Times* cataloged the dismal performance of America's largest companies in bringing black women and men into meaningful leadership roles: no black people on

the senior leadership teams of Bank of America, JPMorgan (where managers in Phoenix branches were recorded making racist remarks) or Wells Fargo (which was the subject of a federal lawsuit for discriminating against minority home buyers); no blacks among the senior leadership teams of tech giants Facebook, Google, Microsoft and Amazon; and just four black CEOs altogether among the country's 500 largest companies. While there has been an increase in the representation of black people in boardrooms in recent years, they have not been very successful in achieving change in their companies, not surprising since the real power remains with the executive team and board management committees that have historically been composed entirely of white males. In fact, while blacks made up over 13% of the American population as of 2020, at that time only four Fortune 500 CEOs were black (and none were female) and less than 3% of senior corporate jobs and less than 8% of all white-collar jobs were held by African-Americans.<sup>52</sup>

In order to increase the chances that black women and men will be offered leadership positions in the C-suite there needs to be more people of color in the boardroom. Companies need to commit to diversity in the boardroom through purposeful inclusion of women and people of color as members of the board of directors. In addition, people of color need to be represented on advisory boards created to focus on the company's environmental and social responsibilities and commitments. Finally, all of the directors, regardless of their race, need to hold themselves and management accountable for specific objectives around recruitment, retention and promotion of people of color.

One of the biggest contributions that directors can make to progress on diversity and inclusion by their companies is their oversight of the actions and priorities of the members of the executive team, particularly the CEO that leads the team and typically also serves as a director. As environmental and social responsibility has grown in importance in the eyes of various corporate stakeholders and observers the role of the CEO has been evolving substantially to include attention to broader societal, political and cultural issues and problems. According to the author of the Bartleby column on work and management in *The Economist*: "The modern senior executive must be a statesman (or woman), dealing not just with shareholders but wider society. They must be attuned to the views of their employees and customers, in case the company finds itself in the middle of a social or political conflict."<sup>53</sup> Bartleby noted that while monetary rewards of managers have been linked to financial targets, rather than these broader criteria, in the past, "the task for the next few years is to find ways to measure the executive's success in dealing with staff and other stakeholders, when clear yardsticks are hard to find."<sup>54</sup>

As part of its oversight of executive compensation the board needs to commit to tying performance-based remuneration (i.e., bonuses) for the CEO and other members of the executive team to diversity and inclusion metrics and ensure that contributing to economic and racial justice is part of the CEO's formal duties and responsibilities. Some companies, such as Microsoft, Intel and Johnson & Johnson, have taken this step;

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<sup>52</sup> The great awakening?, *The Economist* (June 13, 2020), 49.

<sup>53</sup> Tale of the century, *The Economist* (June 13, 2020), 52.

<sup>54</sup> *Id.* at 52.

however, they have been outliers and many more companies need to take similar steps. Moreover, while working toward creating a workforce that reflects the world in which the company operates should be a priority of the CEO, diversity and inclusion should be embedded throughout the organization and bonus calculations for employees should also include credit for supporting the company's efforts relating to hiring and retention goals.

Perhaps the biggest challenge and opportunity for the directors and members of the executive team is making the bold strategic decisions that are required to shift the purpose of the business toward being what the Society for Human Resource Management ("SHRM") has described as a "force for good in matters of social justice".<sup>55</sup> There has been much debate regarding the role of business and it has been suggested that "the purpose of business is to solve the problems of people and planet profitably, and not profit from causing problems".<sup>56</sup> Obviously the "purpose of business" is a complex and contentious concept, one that has been and will continue to be debated; however, companies wishing to be taken seriously with regard to their promises of support for racial equity and justice need to be prepared to consider and implement sweeping changes to their business models—SHRM suggested changing revenue streams and/or adding new business lines—and mode of operations, steps that can only be taken at the highest levels of the organization.

SDG Compass is another organization that has suggested that companies consider changes to their business models as a way make a positive impact on addressing inequality and empowering marginalized groups in the workplace, marketplace and community and offered the following examples of steps that companies could take: developing products and services tailored for poor customers (e.g. mobile based money transfer services for unbanked consumers); improving access to basic goods and services for people living in poverty (e.g. through core business, policy dialogue, social investment); recruiting, training and employing local community members, including those living in poverty, and integrate them into the company's value chain as producers, suppliers, distributors, vendors; investing in business-driven poverty eradication activities (e.g. develop living wage policy) and partnering with civil society networks to provide education and entrepreneurial skills training.<sup>57</sup>

## Community Investment and Engagement

While many of the steps that companies should and can take relating to diversity and inclusion are largely internal, they can also take actions to address systematic racism in the external business and social contexts in which they operate. Companies should commit to advocating for good, supporting employees in their interests in getting involved in community-based programming focusing on racial and economic justice, supporting full participation by workers and community members in democracy, rebuilding trust between

<sup>55</sup> A. Alonso, "An Employer's Guide to Demonstrating Equity and Inclusion: Six Ways to Put Words into Action", Society for Human Resource Management (June 15, 2020), <https://www.shrm.org/resourcesandtools/hr-topics/behavioral-competencies/global-and-cultural-effectiveness/pages/employer-guide-equity-inclusion-words-into-action.aspx>

<sup>56</sup> Principles for Purposeful Business (The British Academy, 2019).

<sup>57</sup> <https://sdgcompass.org/sdgs/sdg-10/>

businesses and communities of color and supporting minority-businesses through investments and preferences in procurement practices.

While many of the steps that companies should and can take relating to diversity and inclusion are largely internal, they can also take actions to address systematic racism in the external business and social contexts in which they operate. Companies should commit to advocating for good by earmarking a significant amount of their lobbying and advocacy budget and related resources to supporting measures that would have a material impact on improving conditions for communities of color (e.g., increasing access to quality education and training, rebuilding infrastructure, ending racial oppression, reforming criminal justice systems and public and mental health systems and rebuilding the safety net). In some cases, advocacy can be tied to creating more opportunities for companies to provide communities of color with access to needed products and services. For example, Prudential worked with community-based coalitions to change state regulations that discouraged small businesses from offering savings plans to their employees, a situation that disproportionately impacted communities of color since a majority of those communities work for small businesses. As a result, Prudential was able to offer its savings plans to small businesses, expanding its available pool of assets for management while strengthening the financial security in communities of color.

Companies need to focus on rebuilding trust among communities of color given that many in those communities are skeptical that businesses really care about racial justice and equality. While a particular company might have a good record and the best of intentions with respect to diversity, inclusion and racial justice, it nonetheless needs to be mindful that it is operating in a marketplace and social and cultural environment in which there has been a substantial and legitimate erosion of trust between businesses and communities of color due to past discriminatory practices including intentional failures to provide people of color with access to products and services on the same terms offered to white customers. Until trust is restored, market opportunities of companies will be limited and customers in communities of color will be deprived of the benefits of the innovations that companies have applied to improve their products and services.

Another way for companies to support changes in the communities in which they operate is by supporting employees in their interests in getting involved in community-based programming focusing on racial and economic justice. Companies should allow employees to volunteer for these programs while being paid by the company and, in appropriate cases, also contribute cash and other resources to such programs. While cash contributions from companies are always welcomed by nonprofits and other organizations working on racial justice initiatives, companies are often well positioned to provide unique resources such as equipment and technology. Moreover, employees bring their own skills and experiences to the situation and can provide support in essential disciplines such as management and finance. Volunteer programs are also a good opportunity for the representatives of the company to speak directly to community members and understand their concerns and their expectations regarding the company.

In addition to advocacy and volunteerism, companies should support communities of color by making investments in minority-owned businesses (or initiatives established for the primary purpose of supporting such businesses) and establishing preferences and requirements in their procurement practices to support minority-owned businesses and the professional development of people of color. It has been estimated that 440,000 black business owners closed their doors in the wake of the Covid-19 pandemic, a 40% drop in the total number of black-owned businesses, and companies can provide black entrepreneurs with the financial support necessary overcome long-standing barriers to their survival including lack of access to credit and meager personal savings. While companies can make direct investments, it may be more effective to commit to funding social impact funds and nonprofits led by people of color that specialize in addressing the unique issues that must be overcome by minority entrepreneurs and which are motivated by the expectations of their investors and donors to achieve significant social change within a specific timetable. Companies should also localize purchasing commitments, develop and use lists of contractors led by people of color and require that professional services providers (e.g., lawyers, accountants and bankers) have at least one person of color in a meaningful role on the team working for the company.

The National Credit Union Administration (“NCUA”) called on its members to develop and implement supplier diversity policies and practices to expand outreach for contracting opportunities to minority- and women-owned businesses and provide those businesses with opportunities to bid on certain contracts or procurement activities and otherwise inform them about how to do business with the credit union.<sup>58</sup> The NCUA argued that integrating diversity into procurement practices promotes the development of a competitive advantage based on having a broad selection of available and diverse suppliers to choose from with respect to factors such as price, quality, attention to detail, and future relationship building. The NCUA recommended that organizations should have a written supplier diversity policy that provides opportunities for minority and women-owned businesses to bid to deliver business goods and services, set aside some percentage of outside contracts as eligible for preferences for qualified minority- and women-owned businesses, establish metrics to track performance and demonstrate the impact of supplier diversity policies in terms of contract dollars and job creation and encourage prime contractors to use minority- and women-owned subcontractors by incorporating this objective into business contracts. The NCUA also called for organizations to implement practices that promote a diverse supplier pool such as participating in conferences, workshops and other events that attract qualified suppliers in order to inform them of opportunities to work with the organization and developing an ongoing process to publicize contracting opportunities (including a list of qualified suppliers). Finally, while a good deal of attention is placed on minority- and women-owned businesses, organizations should continuously consider expanding their supplier diversity outreach and practices to include businesses that are owned by persons who are members of other disadvantaged groups.

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<sup>58</sup> National Credit Union Association Voluntary Credit Union Self-Assessment Checklist on Best Practices for Demonstrating a Commitment to Diversity & Inclusion, OMB No. 313340193 (Expired 3/31/2019).



In addition to assisting minority-owned businesses in their communities, companies can provide philanthropic support to other projects and institutions that engage in activities that are essential to the wellbeing and advancement of people of color. For example, companies can provide financial support to community programs relating to education, vocational training and healthcare. In June 2020 Walmart announced that it would create a new center for racial equity underwritten with an initial \$100 million commitment to support its philanthropic initiatives to address racial inequity and fund research, advocacy, innovation practices and tools and stakeholder convening in order to support the work of black philanthropic leaders and organizations that serve black communities. Large technology companies such as Apple, Facebook and Google also announced plans to increase funding for support of entrepreneurs in communities of color. While the additional funding is good news, companies need to carefully allocate and administer the resources and staff the initiatives with people who can apply a diversity lens to assessment of proposals and identify the appropriate metrics for measuring impact and success. Getting the right team in place will take time since even experienced investors, such as those operating in the venture capital community, have been shockingly slow in engaging with entrepreneurial opportunities in black communities. For example, according to data reported on in *The Economist* only one in 50 partners at venture capital firms was black as of 2020 and the ratio among venture capital-financed entrepreneurs was even worse at 1-to-100.<sup>59</sup>

Companies can also help effect changes in public policies that impact conditions relating to racial equity in communities by supporting full participation by their employees and community members in democracy by making Election Day a paid holiday, supporting registration of workers and community members for voting (e.g., setting up tables for voter registration at the workplace), providing assistance to ensure that workers and community members are actually able to vote and hosting forums for candidates to speak to workers and community members regarding their views on economic and social justice issues. It is important for companies to avoid partisanship in these initiatives (i.e., appearing to be trying to influence employees, customers and community members to vote a certain way or otherwise support particular points of view on the political spectrum) and focus on encouraging and empower people to vote their conscience and have their voices heard.

Many companies have significant financial resources that can be contributed to support initiatives and projects to improve the lives of African Americans and other groups that have been disadvantaged in the economic system that has produced substantial wealth for a small sliver of society. However, giving money is no longer enough. As Darren Walker, the President of the Ford Foundation, wrote in *The New York Times*: “The old playbook—giving back through philanthropy as a way of ameliorating the effects of inequality—cannot heal what ails our nation. It cannot address the root causes of this inequality—what the Rev. Dr. Martin Luther King Jr. called ‘the circumstances of economic injustice which make philanthropy necessary’”.<sup>60</sup> For Walker and others, what needs to happen is that

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<sup>59</sup> Beyond the pale, *The Economist* (June 20, 2020), 53.

<sup>60</sup> D. Walker, “Are you willing to give your privilege?”, *The New York Times* (July 5, 2020), SR4.

businesses, the beneficiaries of a system that perpetuates inequality, must be prepared to give up the special privileges and benefits of a system that favors them and needs to be reformed and recast in order for American capitalism to truly be a “beacon for upward mobility”.<sup>61</sup>

## Products and Services

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Surveys confirm that Americans believe that companies can and should advance racial equality by doing a better job in designing thinking around the black experience in their products and customer satisfaction and commit to offering products and services that effectively meet the distinctive needs of markets of color.

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In a 2017 report called *The Competitive Advantage of Racial Equity*, PolicyLink and FSG argued that companies could gain a competitive advantage, and promote racial equity, by offering products or services that effectively met the distinctive needs of markets of color. In June 2020 the Harris Poll organization surveyed Americans about what companies should be doing to advance racial equality and argued that the results made the case for companies to do a better job in designing thinking around black experience in their products and customer satisfaction.<sup>62</sup> In order to be successful, companies needed to begin by authentically understanding the needs of markets of color and how they differ from those in majority-White markets. While this appears to be foundational, it is often difficult given the dearth of data on the needs and behaviors of consumers of color. The next step is identifying and addressing the root causes for why a company’s existing product or service might not be successful in communities in color. For example, communities of color have historically been challenged by lack of access to transportation, which means they cannot easily travel to receive services or purchase products in person. Companies do not have the resources to reconfigure public transit systems, but they can develop innovative ways to deliver their products or services to those communities. Finally, companies need to design products and services (or redesign existing products and services) to meet the discrete needs of communities of color. An example given in the report was the establishment of grocery stores to reach lower-income people of color in areas of Philadelphia that had been ignored by the big national chains that not only offered customized food items but also complementary services that were needed, yet unavailable in the community (e.g., health clinics).

The example given above highlights another way that companies can re-think their business models in ways that allow them to expand the access of communities of color to their products and services: entering into partnerships with businesses and/or nonprofits led by people of color who have a better understanding of the needs of their communities and creating ideas for delivering the company’s products and services in those

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<sup>61</sup> See also E. Kaplan, “Everyone’s An Antiracist. Now What?”, *The New York Times* (July 7, 2020), A19 (“Being truly antiracist will require white people to be inconvenienced by new policies and practices, legal and social, that affect everything in everyone’s daily lives, from jobs to arts and publishing.”).

<sup>62</sup> Americans to Companies: “Do More For Society” (The Harris Poll), <https://theharrispoll.com/americans-to-companies-do-more-for-society/>

communities. The same report mentioned above described how commercial health insurer Cigna collaborated with a local health care system in Memphis, Tennessee, to promote breast cancer screening among its black customers living in neighborhoods with limited access to screening facilities, a partnership that eliminated previously identified gaps in screen for black patients, reduced unnecessary costs of Cigna and improved the overall quality of the local health care system. The report stressed that these types of partnerships needed to be serious and substantial and provide meaningful benefits for both partners and their beneficiaries (i.e., the community members).

Cigna also provided an example of how a company could develop new products or services that meets the needs of minority-owned small businesses that are struggling to survive the health and economic carnage of the Covid-19 pandemic. Many small businesses, particularly in communities of color, were shuttered by the pandemic and many of those that survived have seen revenues decline sharply and have had to terminate or furlough their employees. As those businesses reopen, many of their owners have prioritized providing their workers with access to affordable health insurance and programs that can support workers' health and well-being, realizing that caring for the physical and mental health of their workers is essential if those businesses are to have any reasonable hope of prospering following the societal trauma caused by the pandemic. However, the high costs of health insurance for businesses and individuals are well documented and the good intentions of small business owners mean little if they cannot afford the costs of offering the benefits. In response, Cigna announced in June 2020 that it would be collaborating with innovative health insurance provider Oscar to offer small businesses in Atlanta, the San Francisco Bay Area and across Tennessee access to affordable local health insurance products.<sup>63</sup>

Another obvious step that companies need to take is conducting a thorough and thoughtful assessment of the branding and marketing of its products and services to identify and eliminate hurtful racial stereotyping. For example, within weeks following the death of George Floyd Quaker Oaks took what many had argued was the long overdue step of getting a new name and image for its 130-year old Aunt Jemima brand of syrup and pancake mix, conceding that its origins "are based on a racial stereotype" and prior efforts to "update" the brand to be "appropriate and respectful" had been insufficient. In making the announcement, Quaker, a subsidiary of PepsiCo, said that the move was part of the company's broader efforts "to make progress toward racial equality" and signaled that it intended to continue to "take a hard look at our portfolio of brands and ensure they reflect our values and meet our consumers' expectations". Uncle Ben's rice will also be rebranded, a move that its parent company Mars Inc. explained as follows: "Racism has no place in society. We stand in solidarity with the black community, our associates and our partners in the fight for social justice." When making such assessments, companies need to engage and involve people of color in order

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<sup>63</sup> Cigna + Oscar Helps Small Business Owners who Recognize that a Healthy Workforce is the Key to a Vibrant Business in COVID-19 Environment, Biospace (June 23, 2020), <https://www.biospace.com/article/releases/cigna-oscar-helps-small-business-owners-who-recognize-that-a-healthy-workforce-is-the-key-to-a-vibrant-business-in-covid-19-environment/>

to understand the problems with historical branding and marketing practices. These are not new issues and companies need to dig deeply into the root causes for not making the changes earlier.

While making the necessary reforms to achieve racial fairness and equality within the organization and in relationships with external stakeholders is the right thing to do regardless of traditional business and financial considerations, Scott suggested that companies can also consider the feasibility of creating a branding campaign around fairness and equality based on identifying and promoting a real attachment between those ideas and the company's products and services and the way in which the company treats its employees and customers. Scott noted that companies that develop a reputation for being legitimate and credible supporters of fairness and racial equality benefit from stronger bonds with their customers and are able to tap into a wider and more diverse pool of talent in order to fulfill their recruiting requirements. In addition, such companies are perceived as more trustworthy in the communities in which they operate and are thus able to have greater impact in their community engagement and investment initiatives.<sup>64</sup> However, any investment in branding comes with responsibility and the need to be accountable for acting in the manner suggested by the campaign.

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<sup>64</sup> M. Scott, Practical Tips: How CEOs and Directors Can Lead on Racial Injustice, Chief Executive (June 5, 2020), <https://chiefexecutive.net/how-ceos-and-directors-can-lead-on-racial-injustice/>

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### About the Author

This chapter was written by Alan S. Gutterman, whose prolific output of practical guidance and tools for legal and financial professionals, managers, entrepreneurs and investors has made him one of the best-selling individual authors in the global legal publishing marketplace. His cornerstone work, *Business Transactions Solution*, is an online-only product available and featured on Thomson Reuters' Westlaw, the world's largest legal content platform, which includes almost 200 book-length modules covering the entire lifecycle of a business. Alan has also authored or edited over 90 books on sustainable entrepreneurship, leadership and management, business law and transactions, international law and business and technology management for a number of publishers including Thomson Reuters, Practical Law, Kluwer, Aspatore, Oxford, Quorum, ABA Press, Aspen, Sweet & Maxwell, Euromoney, Business Expert Press, Harvard Business Publishing, CCH and BNA. Alan is currently a partner of GCA Law Partners LLP in Mountain View CA ([www.gcalaw.com](http://www.gcalaw.com)) and has extensive experience as a partner and senior counsel with internationally recognized law firms counseling small and large business enterprises in the areas of general corporate and securities matters, venture capital, mergers and acquisitions, international law and transactions, strategic business alliances, technology transfers and intellectual property, and has also held senior management positions with several technology-based businesses including service as the chief legal officer of a leading international distributor of IT products headquartered in Silicon Valley and as the chief operating officer of an emerging broadband media company. He has been an adjunct faculty member at several colleges and universities, including Berkeley Law, Golden Gate University, Hastings College of Law, Santa Clara University and the University of San Francisco, teaching classes on corporate finance, venture capital, corporate governance, Japanese business law and law and economic development. He has also launched and oversees projects relating to sustainable entrepreneurship and ageism. He received his A.B., M.B.A., and J.D. from the University of California at Berkeley, a D.B.A. from Golden Gate University, and a Ph. D. from the University of Cambridge. For more information about Alan and his activities, and the services he provides through GCA Law Partners LLP, please contact him directly at [alangutterman@gmail.com](mailto:alangutterman@gmail.com), follow him on LinkedIn (<https://www.linkedin.com/in/alangutterman/>) and visit his website at [alangutterman.com](http://alangutterman.com).

### About the Project

The Sustainable Entrepreneurship Project ([www.seproject.org](http://www.seproject.org)) was launched by Alan Gutterman to teach and support individuals and companies, both startups and mature firms, seeking to create and build sustainable businesses based on purpose, innovation, shared value and respect for people and planet. The Project is a California nonprofit public benefit corporation with tax exempt status under section 501(c)(3) of the Internal Revenue Code dedicated to furthering and promoting sustainable entrepreneurship through education and awareness and supporting entrepreneurs in their efforts to launch and scale innovative sustainable enterprises that will have a material positive environmental or social impact on society as a whole.

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