

July 5, 2023

**Liebert Cassidy Whitmore Webinar:
Legally Compliant Strategies for Diversity Enhancement**

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Legally Compliant Strategies for Diversity Enhancement

Riverside Community College District | June 28, 2023

Presented by: Alysha Stein-Manes

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Legally Compliant Strategies for Diversity Enhancement

Presented By:
Alysha Stein-Manes / June 28, 2023

AGENDA

- Legal Backdrop
- Principles of Lawful Hiring Strategies
- Fostering Inclusive Work Cultures & Confronting Unconscious Bias
- Rethinking Job Descriptions
- Recruiting Strategies

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Nondiscrimination in Employment: Law & Regulations

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Federal/State Anti-Discrimination Laws

• **Overview:**

- Prohibition against employment discrimination isn't new
- What constitutes unlawful discrimination has changed **BUT**
- *Expectations have not changed*

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Federal/State Anti-Discrimination Laws

- Title VII of the Civil Rights Act of 1964
- Title IX of the Education Amendments of 1974
- Americans with Disabilities Act (ADA)
- Age Discrimination in Employment Act (ADEA)
- Fair Employment and Housing Act (FEHA)

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Federal/State Anti-Discrimination Laws

• **Employment Discrimination Includes:**

- Refusal to hire*
- Rejection from training program
- Discharge from employment/training program
- Any decision affecting compensation, terms, conditions, privileges

(*If based on a protected status)

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Federal/State Anti-Discrimination Laws

- **No Discrimination on Basis of:**
 - Sex/Gender (including gender identity/gender expression)
 - Genetic Information
 - Race
 - National Origin
 - Hair texture/hairstyles associated w/particular race/national origin
 - Religious Creed
 - Color
 - Ancestry
 - Physical/Mental Disability, Medical Condition
 - Marital Status
 - Age
 - Sexual Orientation
 - Military and Veteran Status

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Equal Employment Opportunity In California

Proposition 209 (Cal. Const. Art. 1, Sec. 31)*

- Prohibits "preferential treatment" on basis of:
 - Race
 - Sex
 - Color
 - Ethnicity
 - National Origin
- In Public:
 - Employment
 - Education
 - Contracting

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Prop 209 & The Courts*

- Targeted recruitment = unlawful preference

**Hi-Voltage v. City of San Jose
Connerly v. State Personnel Board*

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**Prop 209:
Legislative Response**

- Recruitment may include:
 - "Focused outreach and recruitment" of women and minorities*

*Gov. Code § 7400

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**Equal Employment Opportunity
In California**

Prop 209: Legislative Response

- Funding contingent on:
 - "Each district employer *shall* commit to sustained action to devise recruiting, training and advancement opportunities that will result in equal employment opportunities . . ."

* EC 87101(c)

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**Equal Employment Opportunity
in California**

- Academic & administrative applicants must demonstrate:
 - "sensitivity to and understanding of the diverse academic, socioeconomic, cultural, and ethnic backgrounds of community college students."

*EC 87360

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Equal Employment Opportunity In California

• Title 5 Regulations:

- Require EEO Plans covering a 3-year period, that now must be reviewed annual to assess progress toward meeting EEO program goals
- Require districts to take steps to eliminate underrepresentation based on protected status.
- Title 5 regulations recently amended

5 CCR, §§ 51010 *et seq.*, 53000 *et seq.*

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Developing and Maintaining Institutional Commitment to Diversity*

*§ 53024.1.

• Key Premises:

- Establishing/maintaining a diverse workforce is an on-going process
- Appropriate steps depend on the unique circumstances of each institution

• Key Requirements:

- Districts shall locally develop & implement indicators of institutional commitment to diversity
- Sustained effort
- No specific steps are mandated
 - Unless required by State Chancellor

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Developing and Maintaining Institutional Commitment to Diversity *

*§ 53024.1.

May include, but not limited to:

- Conducting campus climate surveys & using this information
- Conducting exit interviews & using this information
- Providing training to employees, students & trustees
 - Elimination of bias in hiring and employment,
 - Cultural awareness
 - Discrimination/harassment prevention
- Maintain programs to support newly-hired employees
- Maintain updated job descriptions and job announcements.
- Timely and thoroughly investigate all harassment & discrimination complaints & take appropriate corrective action in all instances where a violation is found.
- Convey in publications and website the district's commitment to diversity & EEO

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Developing and Maintaining Institutional Commitment to Diversity *

*§ 53024.1.

May include, but are not limited (Cont'd):

- Conveying commitment to diversity & inclusion in district mission statement,
 - Including recognition that a diverse workforce promotes educational goals and values.
- Assess "sensitivity to diversity" of all applicants
- Providing EEO/diversity enhancement resources and assistance to other districts
- Maintaining updated curricula, texts, and/or course descriptions
- Addressing diversity issues in a transparent and collaborative fashion
- Surveying applicants who decline offers & using the information
- Conducting longitudinal analysis of various employment events by monitored group status such as: hiring, promotion, retention, voluntary resignation, termination, and discipline

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Principles of Lawful Hiring Strategies

The Hiring Challenge

3 Principles for Lawful EEO Hiring:

1. Protected status of candidates is *never* a factor
2. Infusing a commitment to diversity & equity into the hiring process *does not* involve lowering standards
3. Infusing a commitment to diversity & equity into the hiring process *does* involve assessing candidates against job-related criteria that:
 - Eliminate irrational barriers
 - Beware the false predictors of performance
 - Expand and update "job related" criteria
 - Be curious

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CCD Hiring Post-209

Lawful strategies for promoting diversity fall into 3 general categories:

- Work culture
- Job definition
- Recruiting strategies

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Fostering Inclusive Work Cultures & Confronting Unconscious Bias

CCD Hiring Post-209

Focus on work culture*

- To improve applicant pools
- To improve employee retention

*Educ. Code § 87101

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Foster Inclusive Work Cultures

- Inclusion isn't tolerance
- Inclusion is:
 - Appreciation
 - Curiosity
 - Empathy
 - Enrichment

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Fostering Inclusive Work Cultures

- Requires:
 - Leadership buy-in
 - Institutional commitment
 - Personal commitment

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Leadership Buy-in

- Leadership:
 - Must have "buy-in" at the top
 - Boards
 - Chancellors
 - Presidents
 - Visible support for diversity and inclusion

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Personal Commitment

- Personal commitment
- Willingness to examine personal attitudes & conduct—"cultural humility"
- Addressing and confronting unconscious bias

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Bias Defined

A particular tendency, trend, inclination, feeling, or opinion, especially one that is preconceived or unreasoned.

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Unconscious vs. Conscious

Two distinct psychological systems:

Unconscious:

"Operates automatically and quickly, with little or no effort and no sense of voluntary control."

Conscious:

"Allocates attention to the effortful mental activities that demand it, including complex computations."

– *Thinking, Fast and Slow* by Daniel Kahneman

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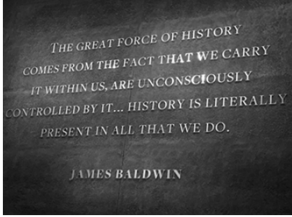
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Where Do Our Biases Come From?

1. Our identities
2. Our experiences
3. History



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Our Biases Impact:

- **Our Perception** – how we see people and perceive reality
- **Our Attitude** – how we react towards certain people
- **Our Behaviors** – how receptive/friendly we are toward certain people
- **Our Attention** – which aspects of a person we pay most attention to
- **Our Listening Skills** – how much we listen to what certain people say
- **Our Micro-affirmations** – how much we comfort certain people in certain situations

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The Bias Blind Spot

People underestimate the influence that self-interest has on their own judgments.

People overestimate the influence that self-interest has on other people's judgments.

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Examples of Common Biases in Hiring & Other Decision-Making Processes

- **Bandwagon effect:** The tendency to do (or believe) things because many other people do (or believe) the same thing
- **Confirmation:** The tendency to confirm what we already believe is true
- **Negativity Effect:** The tendency to allow things that are negative to have a more significant effect than things that are positive or neutral
- **Affinity Bias:** The tendency to have an affinity for people or behaviors that are similar to you

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Addressing Unconscious Bias: Beware the “Good Fit” Myths

Myth #1:

Whether a candidate resonates with me on a personal level provides a reliable predictor of whether the candidate will do a good job.

Myth #2:

How someone performs in an interview setting provides a reliable predictor of how that person will interact with me in the work setting.

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Strategy for Interrupting Unconscious Bias

1. Awareness of self
2. Awareness of others
3. Institutional commitments

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Awareness of Self

1. Know your biases
2. Interrogate your biases
3. Avoid assumptions
4. Be curious

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Awareness of Others

1. Historical context
2. What you say vs. how they hear it
3. Be attentive to reactions

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Institutional Commitments & Interrupting Bias

- Consider whether there are decision points where bias can be "interrupted"
- *Examples from the hiring process:*
 - Remove identifying information (name, address, etc.) from applications
 - Identify desirable interview answers ahead of the interview
 - Utilize a structured hiring process
 - Utilize skill based testing where applicable
 - Conduct anonymous/blind interviews

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Institutional Commitment – At All Levels

- Community wide “buy-in” essential for success
- Ensure input from all stake holders
 - Administrators
 - Staff and faculty
 - Senates
 - Unions
- Utilize “principles” of participatory governance
 - Actual procedures will depend on district shared governance agreement

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Institutional Commitment- At All Levels

- Mutual agreement with faculty for faculty hiring procedures
- Inter-departmental collaboration—H.R and academic departments
- See classified service as a partner in building institutional commitment

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Inclusive Work Cultures and Retention

- Mentoring programs
- Opportunities for growth
- Classified → Academic
- Leadership opportunities
- Environment within schools
- Cultural events
- Access

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Inclusive Work Cultures and Retention

Fostering inclusive work cultures

WHAT WORKS?

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Rethinking Job Descriptions & Other Hiring Processes

The Hiring Goal

- Identify the most qualified candidates to recommend forward to next level
- Using a process that is
 - Objective
 - Job-related
 - Curious

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Committee Process — Roles & Responsibilities

- Review job announcement/job description
 - This is your touchstone!
 - Develop forms and procedures
 - Paper screening criteria/process to select interviewees
 - Interview questions
 - Demonstration component (if applicable)
 - Rating form/process
 - Model answers
- Practice tip:** Make sure you are rating what you intend the question to measure

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CCD Hiring Post-209

- Rethink job descriptions
 - Modernize and update by asking:
 - Should we redefine the job?
 - What current knowledge should be expected?
 - What breadth of knowledge should be expected?
 - What new skills and abilities are needed?
 - How do issues of diversity impact this work?
 - What job-related criteria value/attract diverse candidates?
 - What job-related criteria assess "sensitivity to diversity...?"
 - Who are the students served and what are their needs?

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Rethink Job Descriptions

Eliminate Barriers

- Examine preferred qualifications (i.e. what you rely on as predictors of performance) for:
 - "Irrational barriers"
 - To identifying qualified candidates from underrepresented groups in that discipline or job.
 - ✓ Years of experience?
 - ✓ Type of experience?
 - ✓ Education?

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Rethink Job Descriptions

- Identify job-related criteria likely to enhance applicant pool diversity
- Develop job descriptions reflecting these criteria

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Rethink Job Descriptions

Identify preferred qualifications or expectations that express what you are looking for:

- *The successful candidate should have the ability to ...*
- *The successful candidate should be familiar with:*
 - *the works of...*
 - *developments in the field including...*
- *The successful candidate should have knowledge of...*

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Rethink Job Descriptions

- For example:
 - Valuing currency of knowledge may facilitate a more diverse, qualified pool
 - Valuing current knowledge gives those more recent to the field the opportunity to shine
 - Diversity increases among those more recent to the field

*Note: This does not mean valuing *younger* candidates.

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Rethink Job Descriptions

- For example, in faculty context:
 - Global perspective is consistent with CCD mission
 - Is global perspective evident in how jobs are defined and knowledge/skills required?
 - If not: reexamine curriculum, programs, majors, etc.

* Note: This will both improve work culture and may diversify pool of qualified candidates.

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Rethink Job Descriptions

- What are possible criteria (if job related) that:
 - Will recognize the knowledge, skills, abilities of a more diverse group of candidates?

For....

- A biology professor?
- A bookstore manager?
- A dean?

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Rethink Job Descriptions

Improve Assessment Of "Sensitivity To Diversity"

- Academic and administrative applicants must demonstrate:
 - "sensitivity to and understanding of the diverse academic, socioeconomic, cultural, and ethnic backgrounds of community college students."*
- For academic and administrative positions this is a required qualification

*Educ. Code § 87360

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Exercise:

“What Are We Looking For?”

- Break into small groups
- Pick position to consider: Biology Professor, Dean of Humanities, Bookstore Manager
- Identify at least 3 potential barriers to hiring qualified individuals from a traditionally underrepresented group
- Identify at least 3 criteria for assessing “sensitivity to diversity” that are related to specific position
- Identify at least one way job description can “go global”

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Who gets interviewed? Screening The MQ Applicants

- **Who gets the interview?**
 - Critically important step
 - Where diversity of pool often dwindles
 - Important at this phase:
 - Written application questions, tethered to job description
 - Focus on currency of knowledge
 - Assess global knowledge (if job related)
 - Initial sensitivity to diversity review
 - Rating criteria

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Recruiting Strategies

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Recruiting Strategies

- Recruiting strategies that:
 - Create highly qualified, diverse applicant pools
 - From which you hire most qualified candidate

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Recruiting Strategies

- Most important recruiting strategies precede the interview:
 - Leadership
 - Community buy-in that this really matters
 - Solid, updated job descriptions & announcements
 - Processes for “interrupting” unconscious bias
 - Well-trained and diverse screening & selection committees

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Recruiting Strategies

- Recruiting strategies that work:
 - Add to (don't replace) traditional avenues
 - Personal connections with career centers
 - Outreach to professional organizations
 - Groom your own students
 - Make district attractive to applicants
 - You are always recruiting and hiring
 - Assume a buyer's market

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Role of Demographic Data

- CCCCO: Hiring committees may be provided race and gender data re: workforce and department
- Risks: Hiring becomes suspect
- Best time to provide demographic data is when it is not tied to a specific search
- Consult with legal counsel before providing demographic data to a search committee in connection with a specific search

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External Recruitment & Internal Hiring

- Districts must conduct external recruitments for all vacancies
 - Except for interim hires for up to two years
- Vacancies do not include:
 - Reorganizations with no net increase in employees
 - Lateral transfers with no net increase in employees
 - A currently occupied position that is upgraded, reclassified or renamed without significantly altering duties
 - Faculty elect a department/division chair for a prescribed term
 - A position filled by a temporary, short-term or substitute employee

*Title 5, Sec. 53021

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External Recruitment & Internal Hiring

- Beware of overusing internal reassignments
 - Overuse of filling "non-vacant" positions could thwart diversity

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External Recruitment & Internal Hiring

Hypothetical:

The Chancellor tells HR that he wants to promote an existing employee into a vacant position. He suggests the promotion is just a reorganization since there is no net increase in employees, and HR can still externally recruit for the vacancy created by the promotion.

Is this permissible?

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Thank You!

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