



# Inclusion and Diversity Webinar Series (Part 3)

## *Employer Resource Groups*

January 13, 2021

**Seyfarth Shaw LLP**

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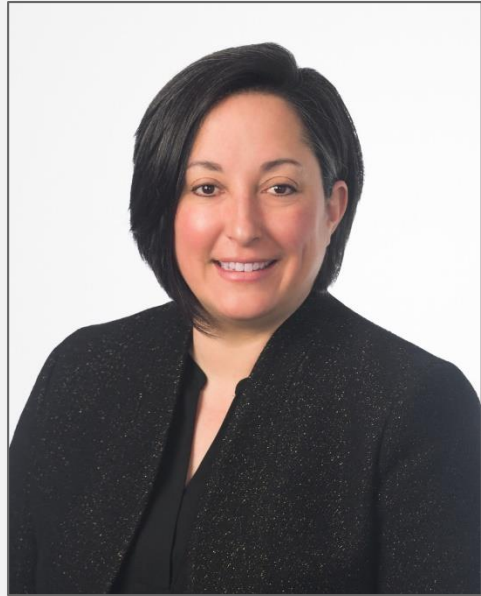
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# Joining You Today

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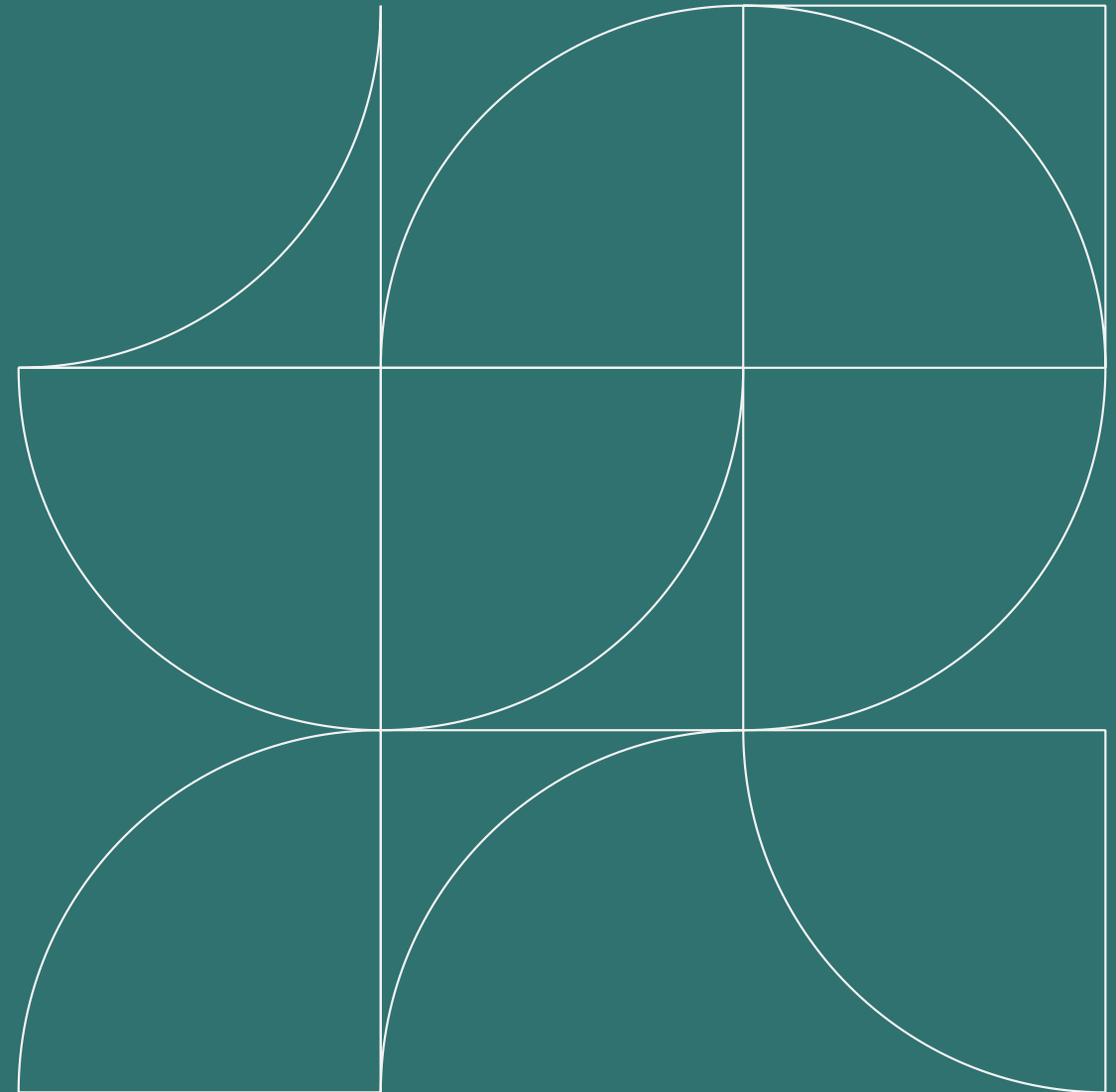


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# Agenda

- 01** What is an Employee Resource Group (ERG)?
- 02** The Overarching Legal Framework
- 03** Legal Implications Related to ERGs
- 04** Takeaways on ERGs

# What Is An Employee Resource Group (ERG)?

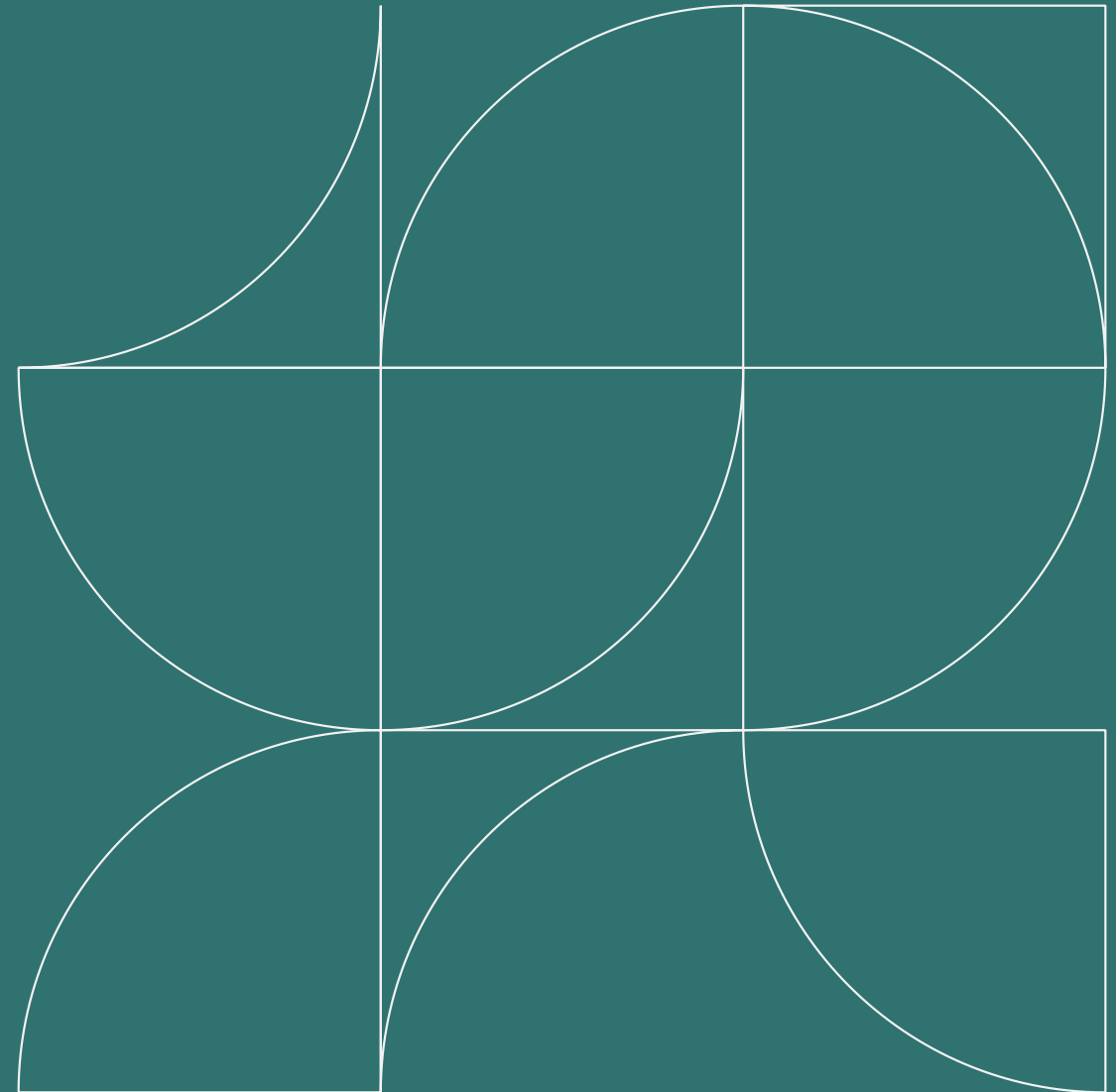




## Background on Employee Resource Groups (ERGs)

- Employee Resource Groups or Affinity Groups are:
  - voluntary
  - employee-led groups
  - promote a diverse, inclusive workplace
- Typically created around and focused on common identity
  - race,
  - gender,
  - sexual orientation,
  - etc
- **Not** designed to provide a forum for employees to
  - address terms and conditions of employment
  - make proposals to the Company
  - represent other employees

# The Overarching Legal Framework



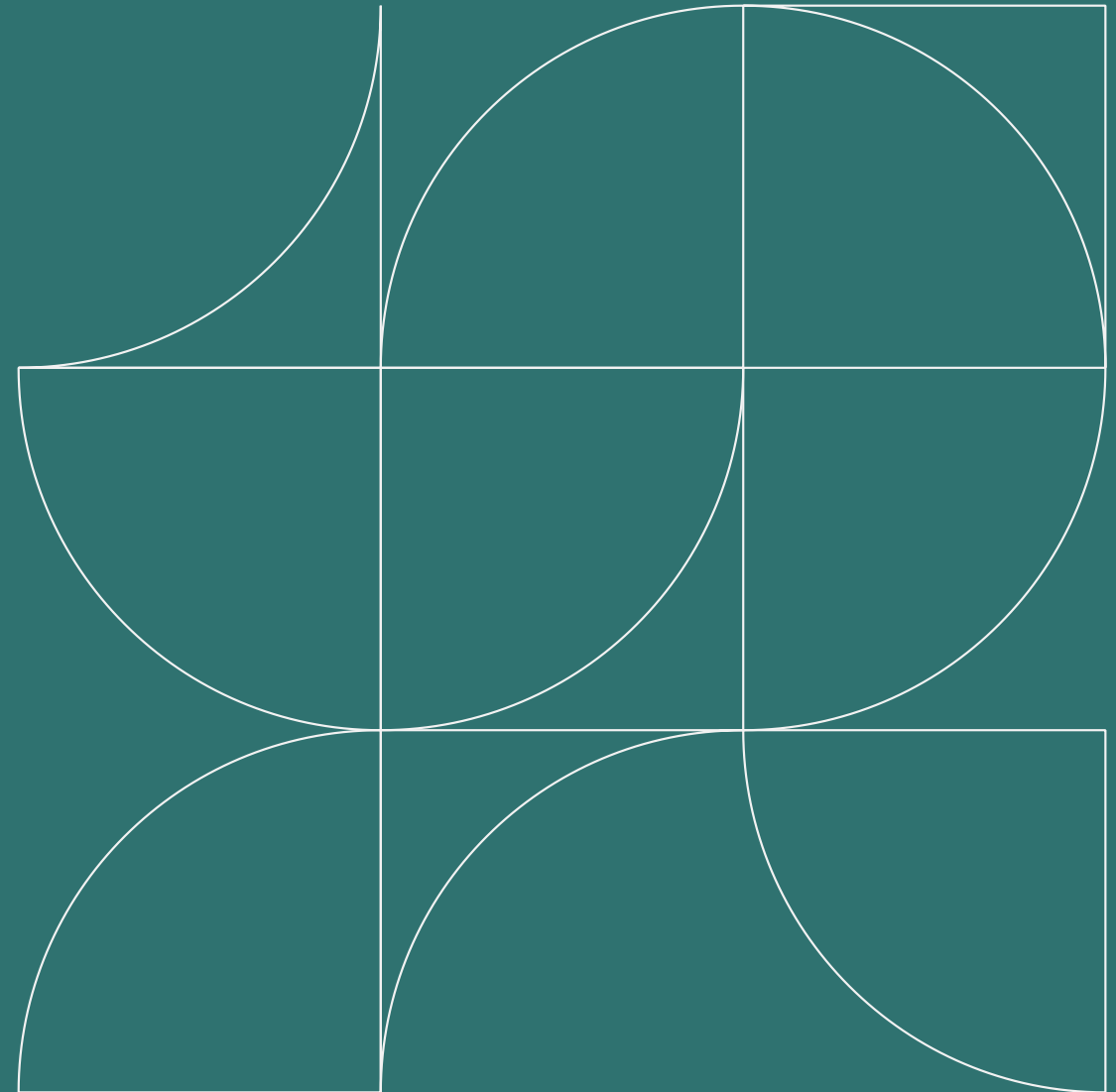


# U.S. Law Requires Consistent Treatment

- Title VII of the Civil Rights Act of 1964 prohibits discrimination based upon:
  - Race
  - Color
  - Religion
  - Sex
  - National Origin
- Employers **can** have policies which touch these categories
- Employers **cannot** apply policies inconsistently for these categories
- For example:
  - A company **can** have a policy of refusing to recognize affinity groups that seek to promote a religious position
  - A company **cannot** have a policy of refusing to recognize affinity groups that seek to promote Christianity



# Legal Implications Related to ERGs





## All ERGs and Employees Should Be Treated Consistently

- Be careful to treat members of all ERGs the same
- Ensure that members of ERGs are treated the same as employees who are not members of an ERG
- Compensate employees for time spent at ERG and non-ERG meetings during work hours the same

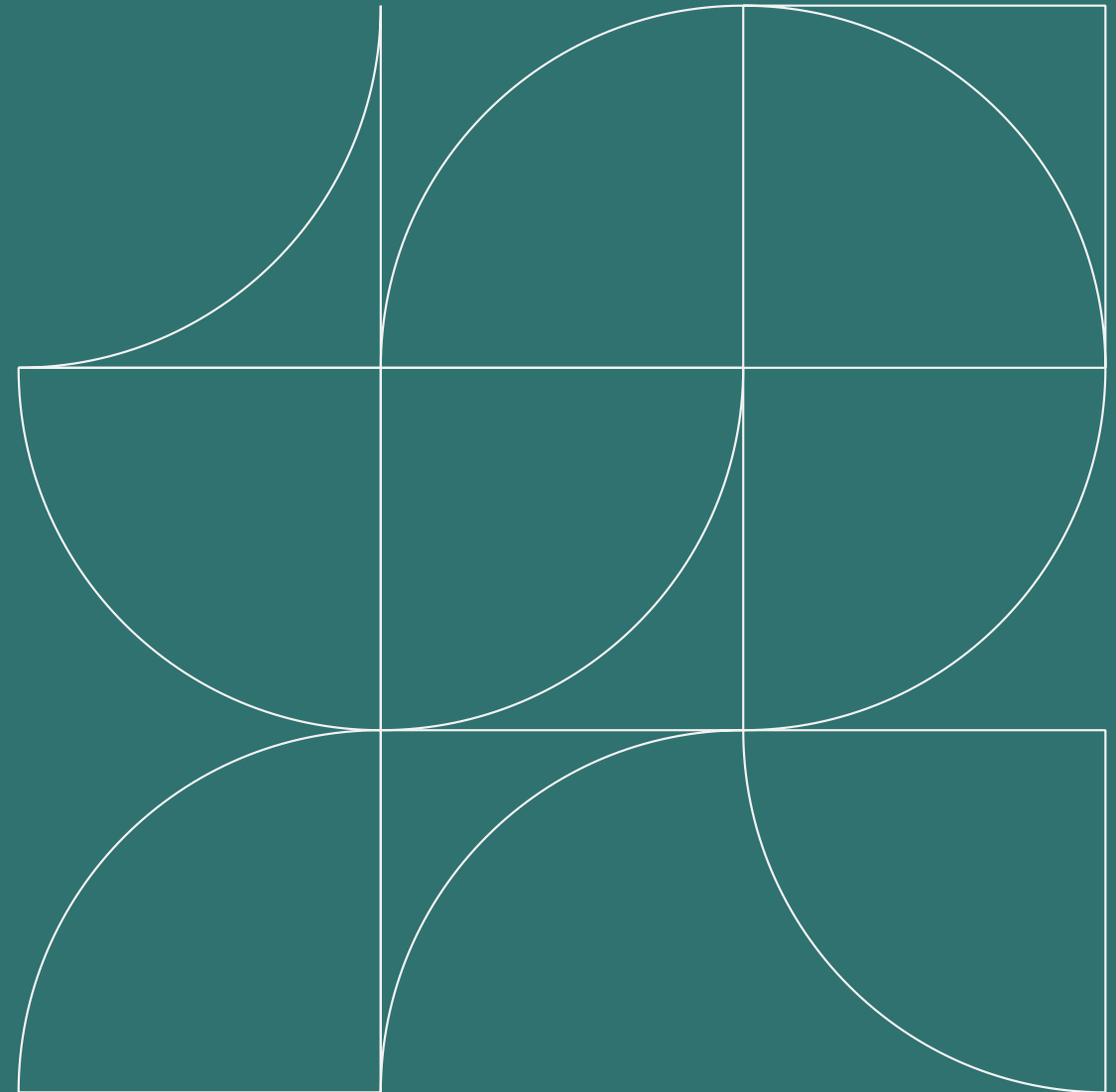


## Employers Should Be Mindful of Discrimination Complaints Related to ERGs

- Have a clear process in place for dealing with complaints of discrimination or harassment made during meetings
- Be mindful of legal obligations created by complaints raised during meetings through appropriate channels
- Consider the NLRA implications of confidentiality or content based “gag rules” for meetings



# Important Takeaways on ERGs





## Have a Clear Set of Policies and Practices for How ERGs are Established and Maintained

- These policies should include:
  - policy statement
  - exclusions
  - process for recognition
  - process for renewal
  - support and funding
  - employee complaints raised during meetings
  - criteria and responsibilities for ERGs



## Set Clear Expectations for How the Company Requires ERGs to Conduct Themselves

- Ensure that approved ERGs align with its values as an organization
- Require that ERGs be open to all employees who share the group's objectives regardless of protected status
- Avoid “dealing with” ERGs on issues relating to the terms and conditions of employment



## Avoid NLRA Implications

- Clearly outline expectations and purposes of ERG in policies and procedures
- The company can still solicit feedback from ERGs through mechanisms such as:
  - Suggestion boxes
  - Employee engagement surveys
  - Brainstorming groups
- Interactions between the ERG and management should be unilateral rather than bilateral
  - Making suggestions to management is okay
  - Requesting a meeting to discuss concerns is not okay



# Questions?



**Reminder!**

**Inclusion & Diversity Webinar Series**

**Join us for Part Four: Diverse Slates**

Friday, January 15, 2021 at 2:00 p.m. Eastern

[Register Here](#)