



Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

Seyfarth Shaw LLP

“Seyfarth” refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).

©2020 Seyfarth Shaw LLP. All rights reserved. Private and Confidential



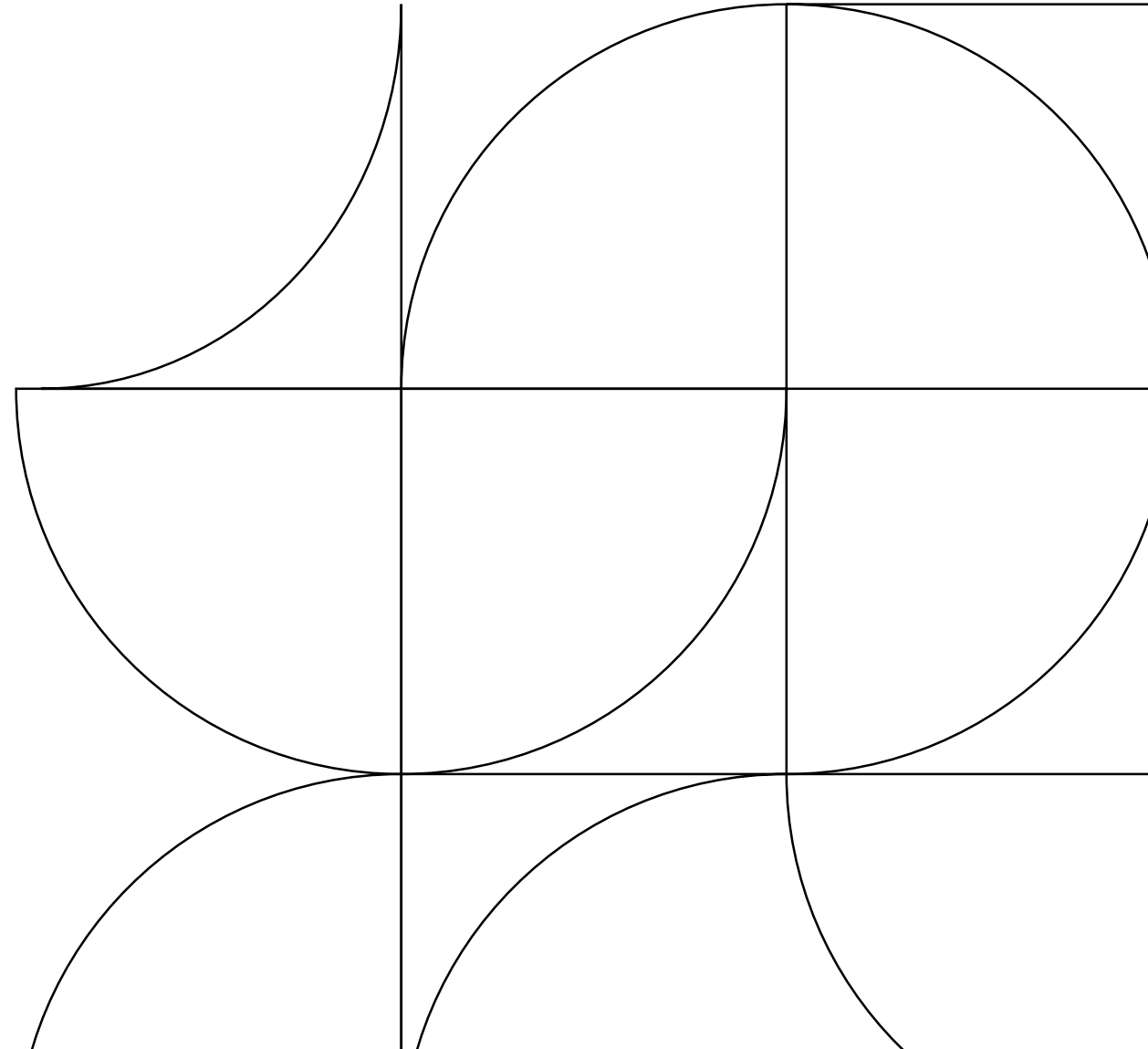
Inclusion and Diversity Webinar Series (Part 1)

Creating Meaningful Change When Building Effective Inclusion Programs

March 4, 2020

Seyfarth Shaw LLP

"Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2020 Seyfarth Shaw LLP. All rights reserved. Private and Confidential



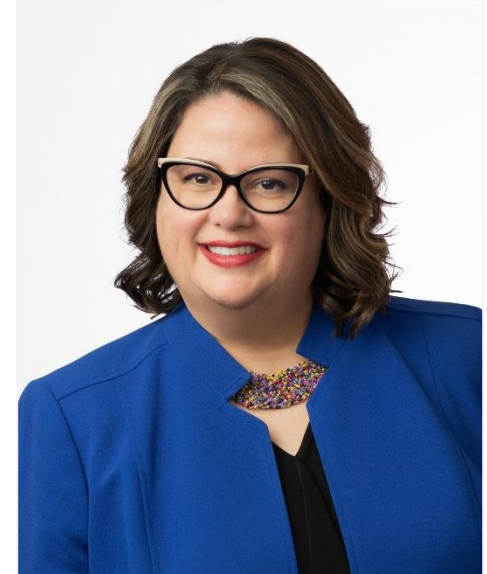
Joining You Today



Lisa Damon | Partner
ldamon@seyfarth.com
617-946-4880



Laura Maechtlen | Partner
lmaechtlen@seyfarth.com
415-544-1011

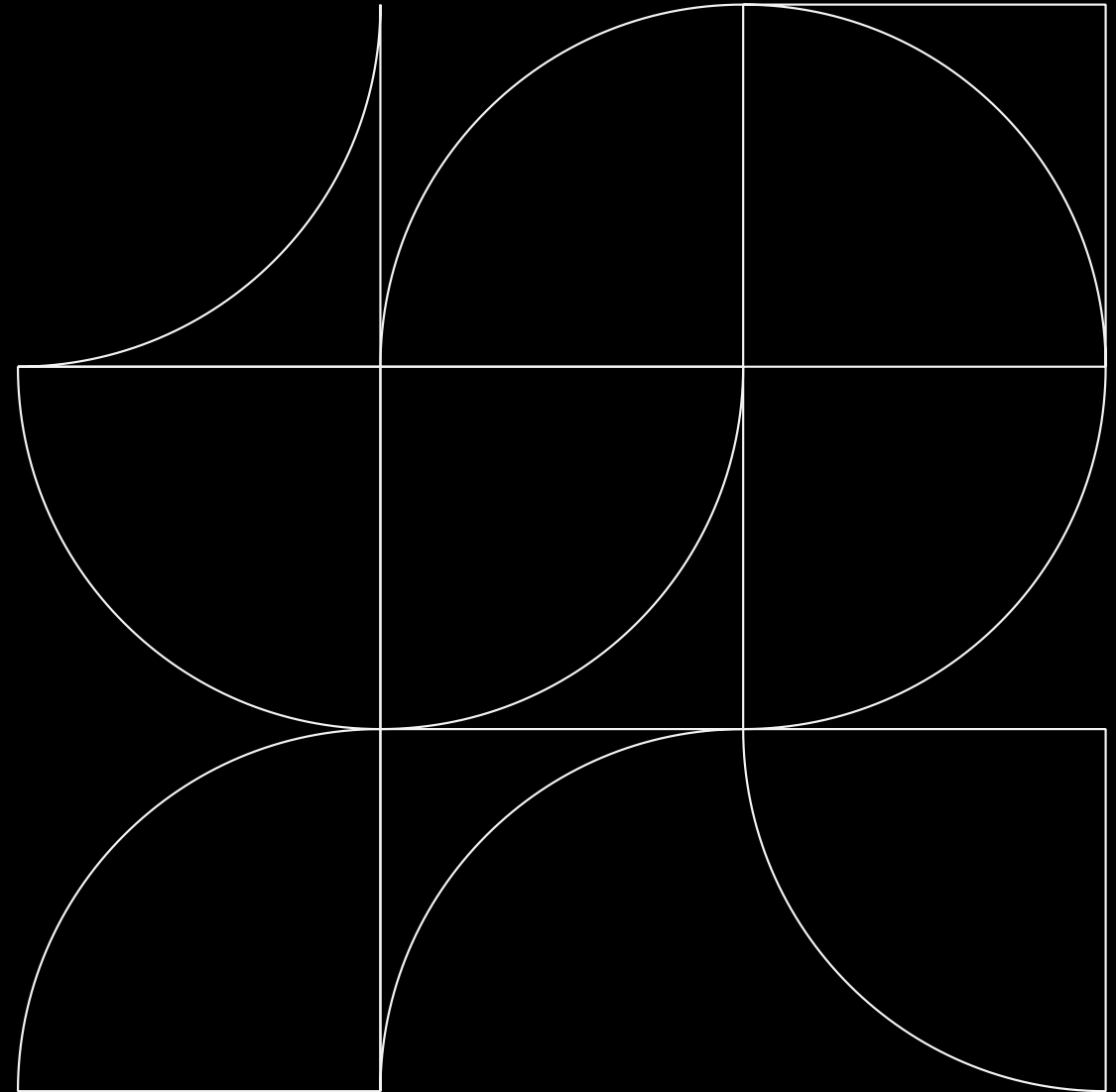


Annette Tyman | Partner
atyman@seyfarth.com
312-460-5943

Agenda

- 01** Defining Key Terms
- 02** Legal Framework of Inclusion Programs
- 03** Developing an Effective Inclusion & Diversity Structure
- 04** Other Trends in Inclusion & Diversity

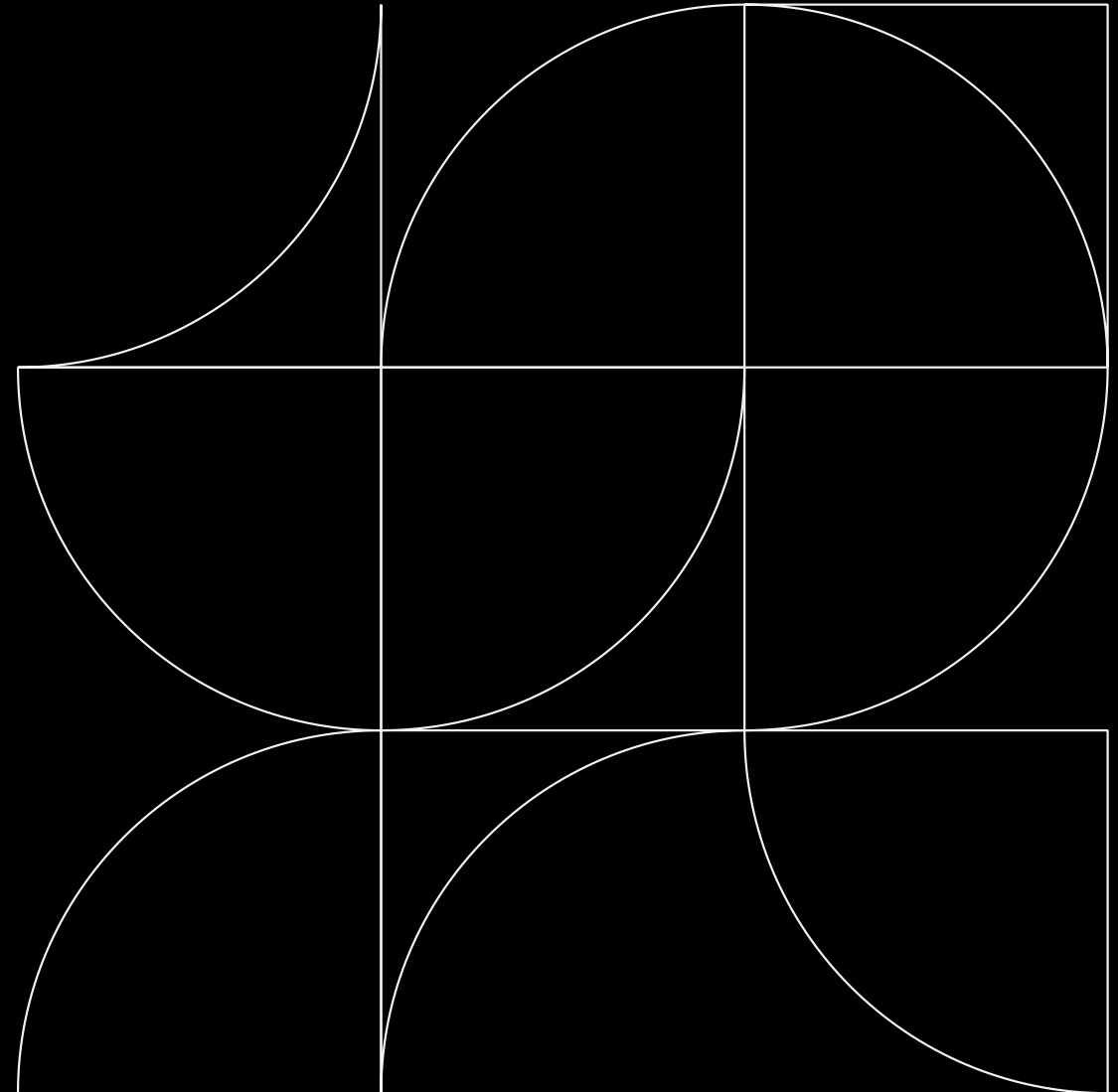
Defining Key Terms



Diversity, Inclusion, and Belonging

- How is “diversity” defined?
 - The attributes that makes us unique
 - Usually a broad concept - beyond race/ethnicity and sex
- The concept of “inclusion”
 - Invited to the right meetings, access to opportunities, generally have a seat at the table
- Evolution towards “belonging”
 - A work environment in which workers feel secure, supported, accepted, and included
- Important: Local Differences in Global Programs Matter
 - Differences in protected categories
 - Cultural norms

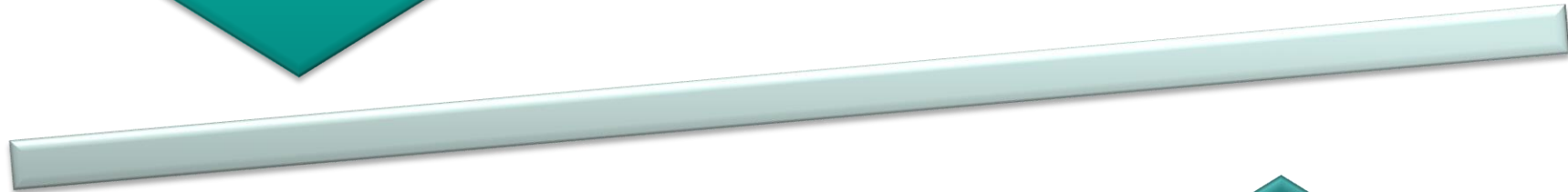
Legal Framework of Inclusion Programs



U.S. Law – Requires Balance



Proactive Efforts to Recruit, Employ, and Advance in Employment Women and Racial/Ethnic Minorities
Developing Goals to Address Underutilization



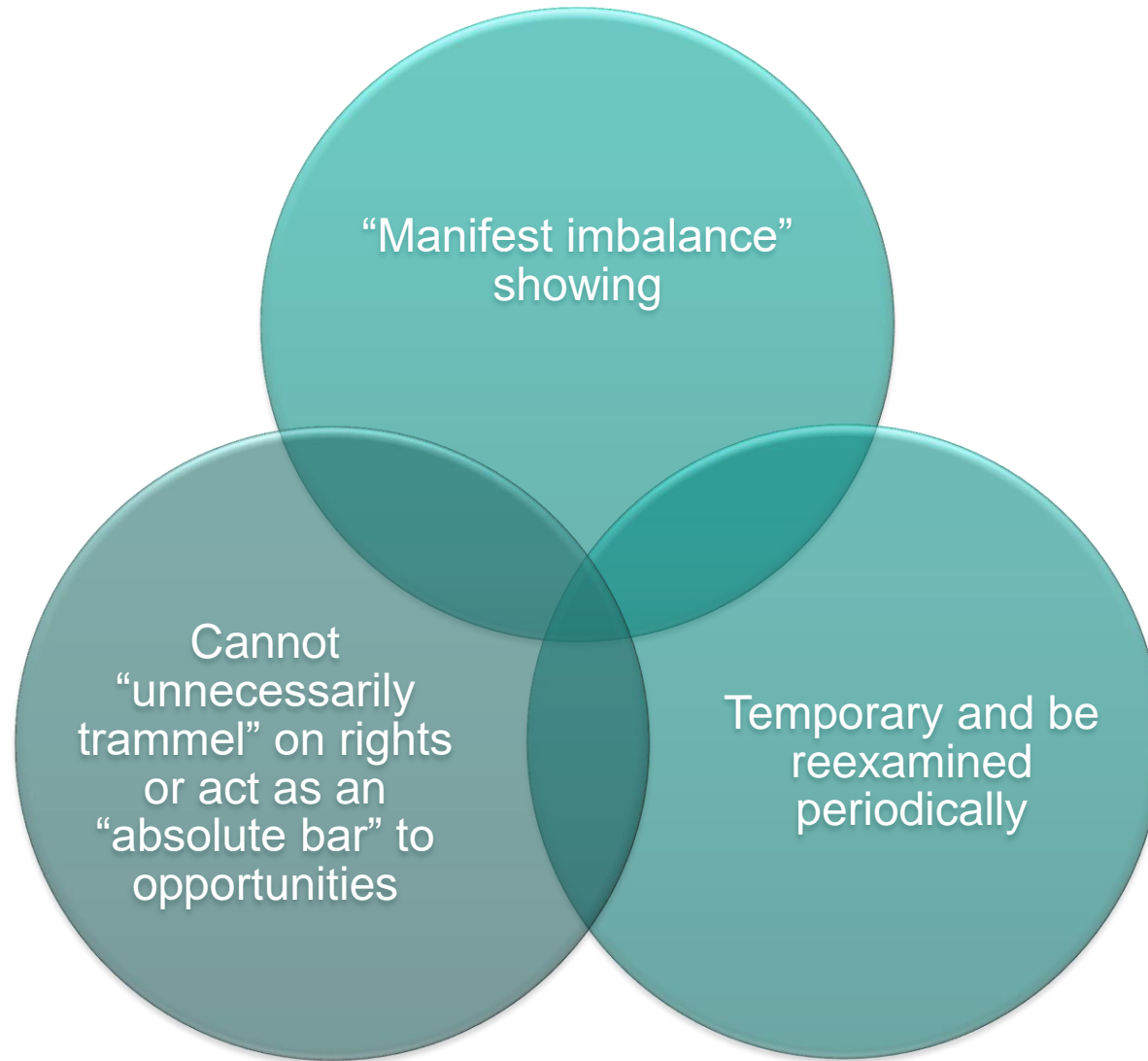
Disparate Treatment Discrimination

Decision maker unlawfully considers protected category (e.g., race or gender) when making employment decisions

Disparate Impact Discrimination

Neutral employment practice that has disproportionate and negative impact on employees or applicants without a corresponding legitimate business justification

U.S. - Limited Race/Gender Based Preferences Permitted in the U.S.



- Decisions must not be made by "reflexive adherence to numerical standard"
- Set asides or quotas are prohibited
- The measures must be remedial and not intended to maintain gender or racial imbalance

Also Legally Permissible in the U.S. – More Leeway

- Implementation of Policies/Programs:
 - With a goal of promoting respect for differences
 - Aimed at recruiting employees from a more diverse applicant pool or encouraging development of diverse employees

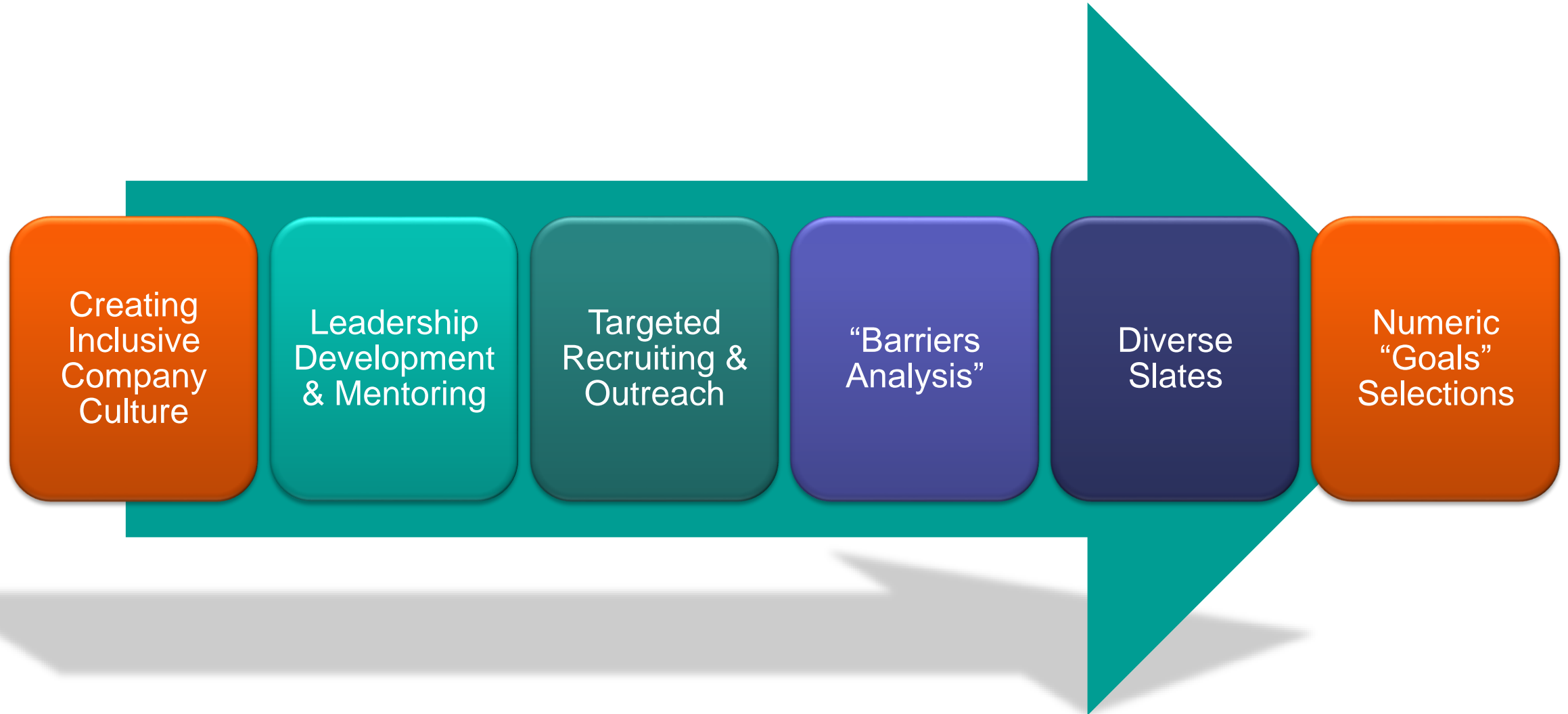
“An employer’s affirmative efforts to recruit minority and female applicants does not constitute discrimination...An inclusive recruitment effort enables employers to generate the largest pool of qualified applicants and helps to ensure that minorities and women are not discriminatorily excluded from employment

Duffy v. Wolle, 123 F.3d 1026 (8th Cir. 1997)

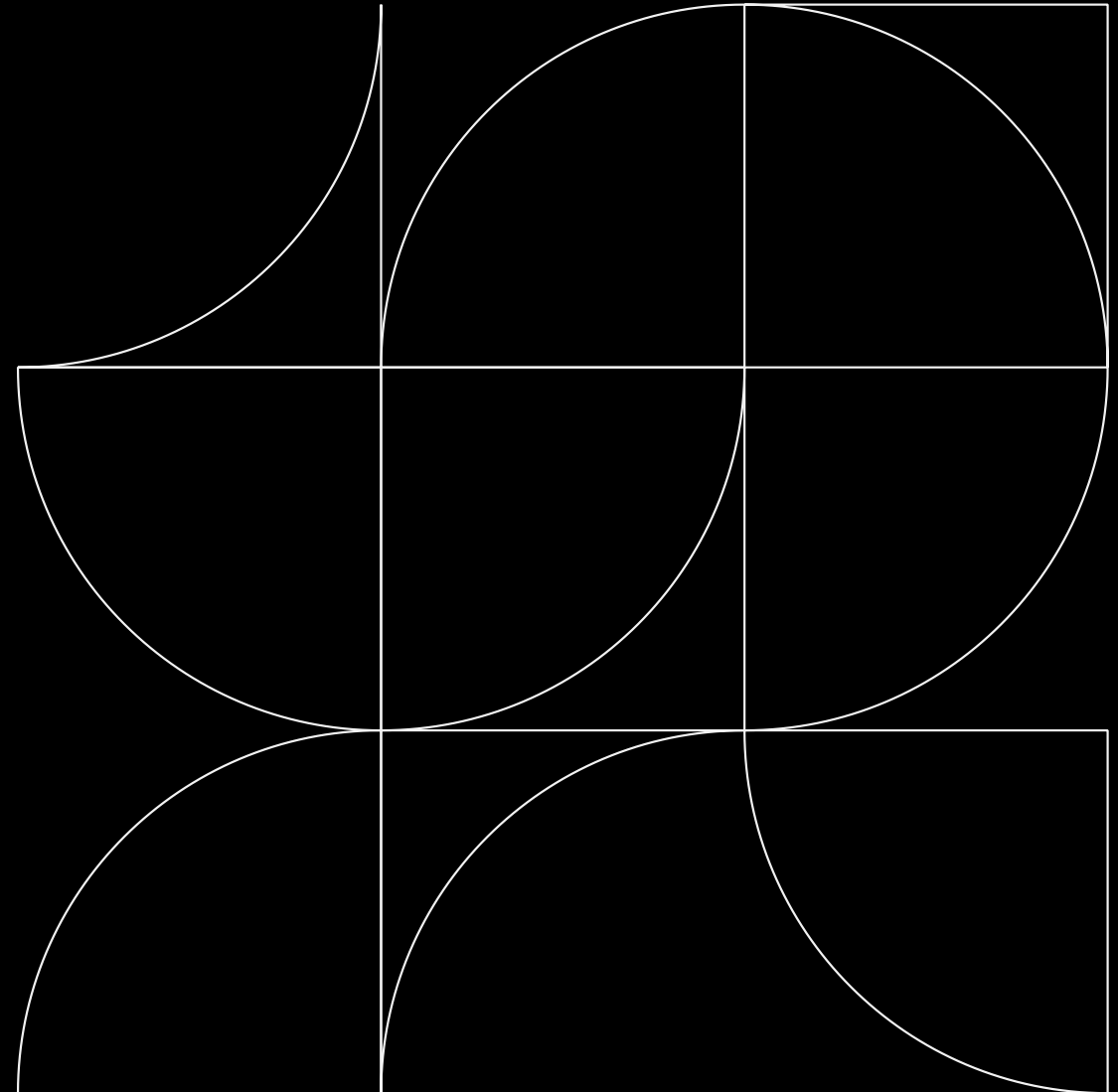
Global Legal Issues to Consider in I&D

- Differences in “protected” categories
- Positive “discrimination”
- Situational protection
- Privacy and data protection regulations
- Equal pay reporting and requirements
- Transparency

Common Inclusion Programs: The I&D Risk Spectrum



Developing an Effective Inclusion & Diversity Structure



Key Components of a Inclusion Program



Best Practices to Consider

- Establish a senior-level diversity commitment with management/executive participation
- Enhance inclusion programs by leveraging existing compliance framework
- Ensure organizational policies and practices consider I&D perspectives
- Implement flexible workplace solutions
- Establish mentoring or sponsorship programs
- Consider increased systematic career guidance and planning programs
- Consider training and education programs
- Consider employee resource groups (ERGs)

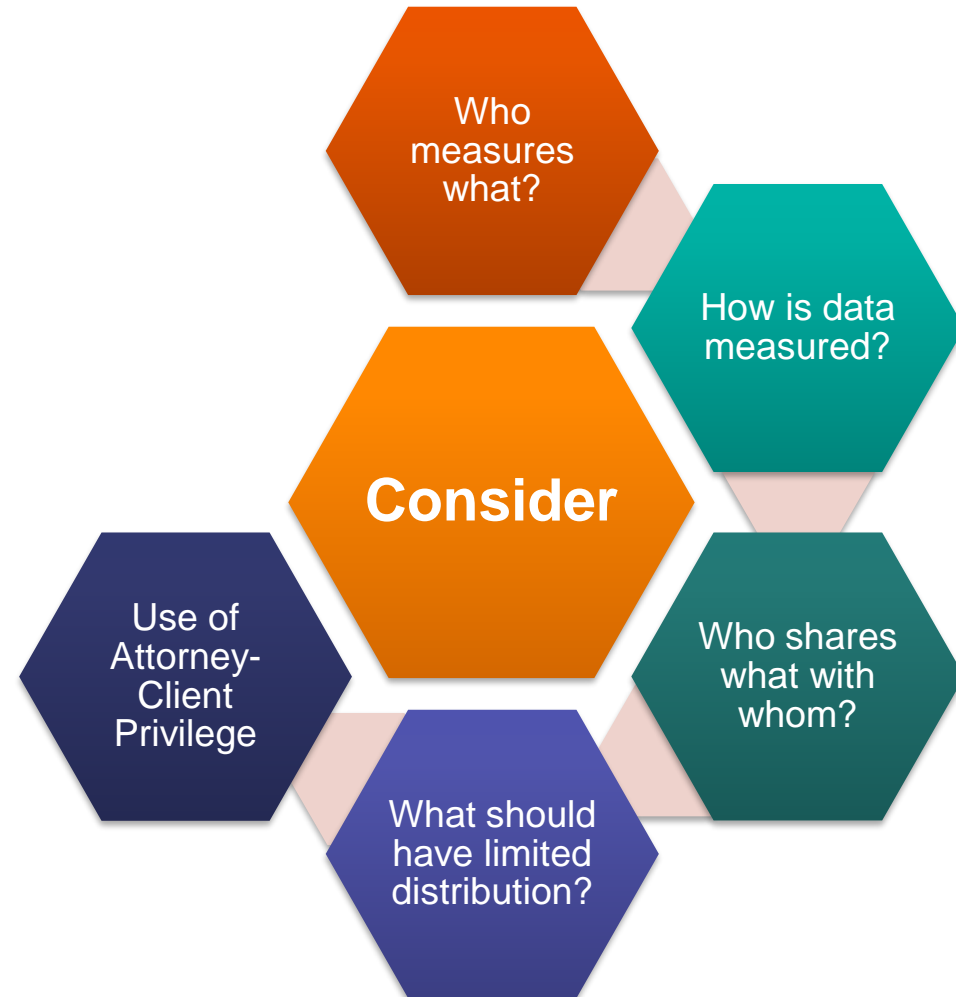
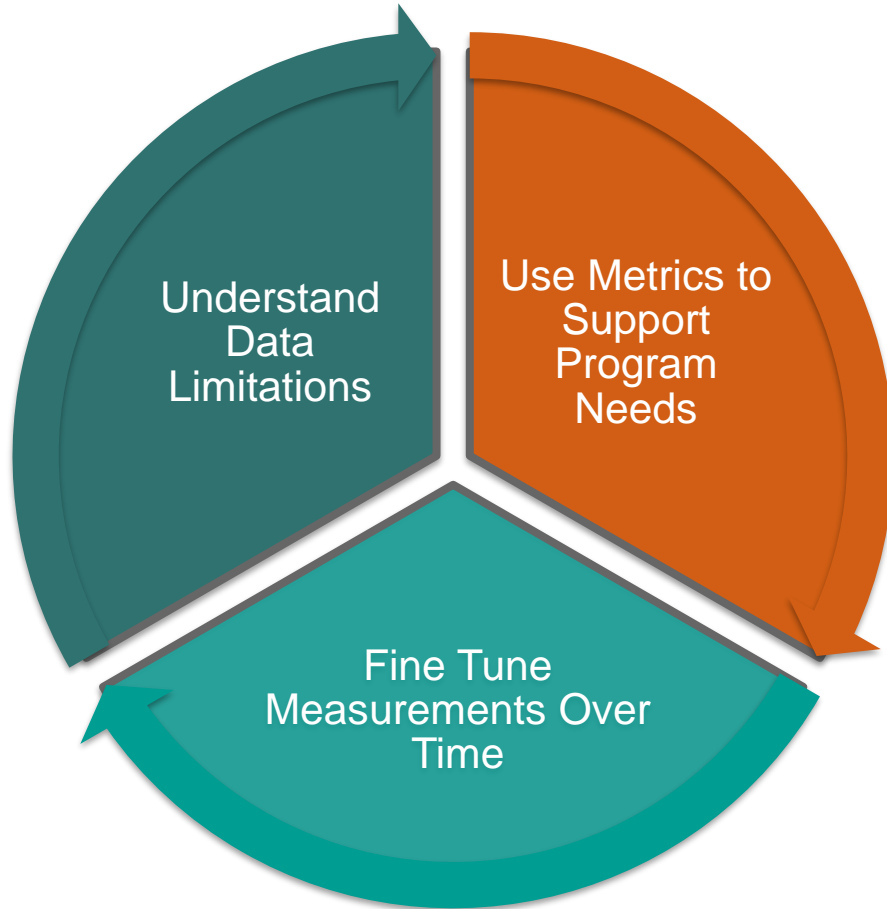
Leadership & Accountability

- Inclusion programs need to have commitment from senior management and a framework to guide the program's efforts
- This framework is specific to each organization
 - Diversity Council
 - Dedicated Chief Diversity Officer
 - Affinity/Belonging Group Structure
- It is becoming more common for companies to report I&D efforts to BOD
 - Consider the best way to get information to BOD that they need to exercise oversight and direct action
 - Ensure legal team reviews all Board communications for legal risk and mitigation purposes.
 - Take care to ensure that reports to the Board are privileged or aligned to external reporting on the same topics.

Policies – And the List Goes On...

- Equal Employment Opportunity/Affirmative Action
- Inclusion Policy - Framework
- Harassment
- Compensation
- Reasonable Accommodation
- Leave Policies
- Parental Leave
- Military Leave (e.g., Spousal Leave)
- Employee Benefits
- Code of Conduct
- Complaint Resolution

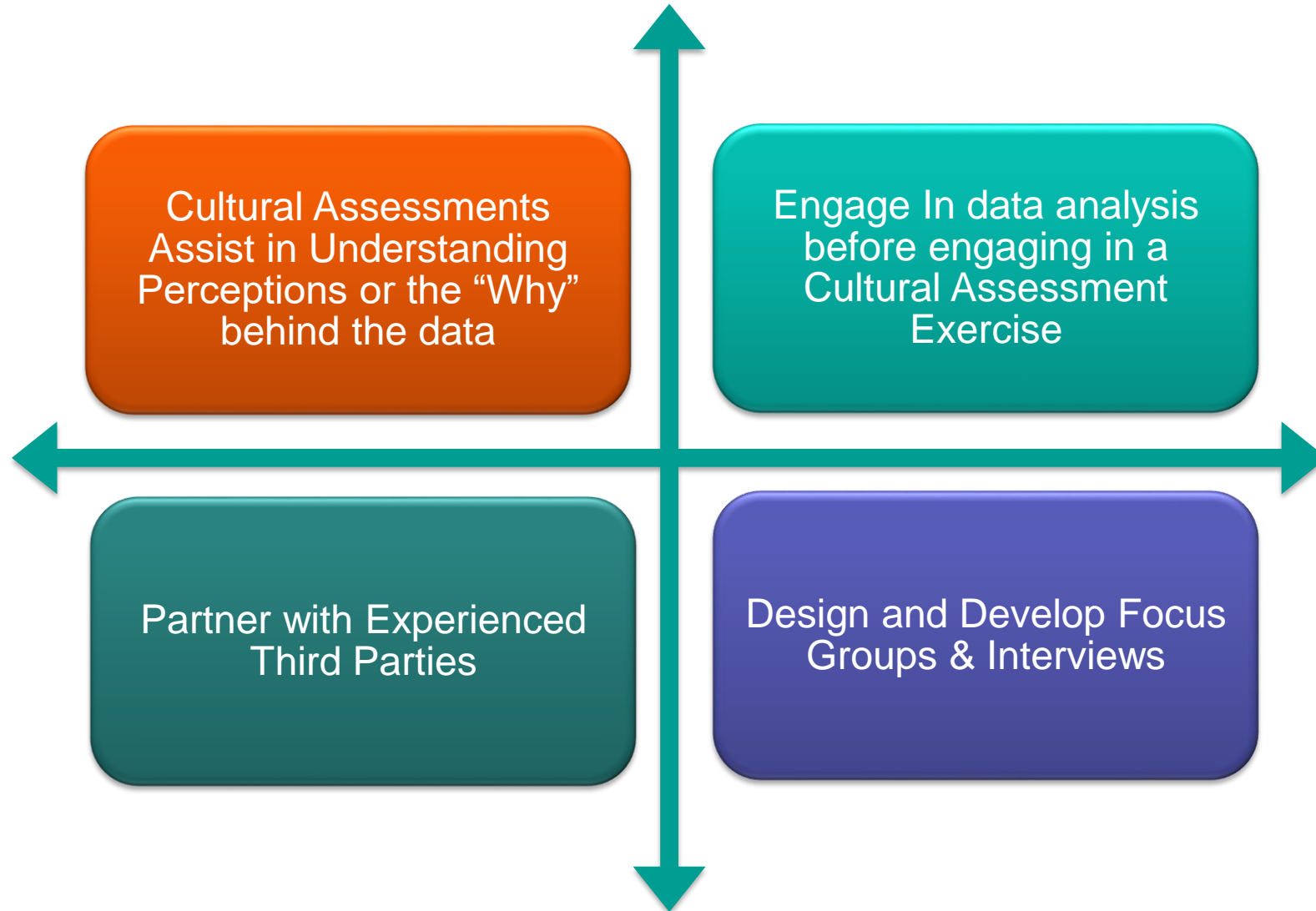
Workforce Analytics & Assessment



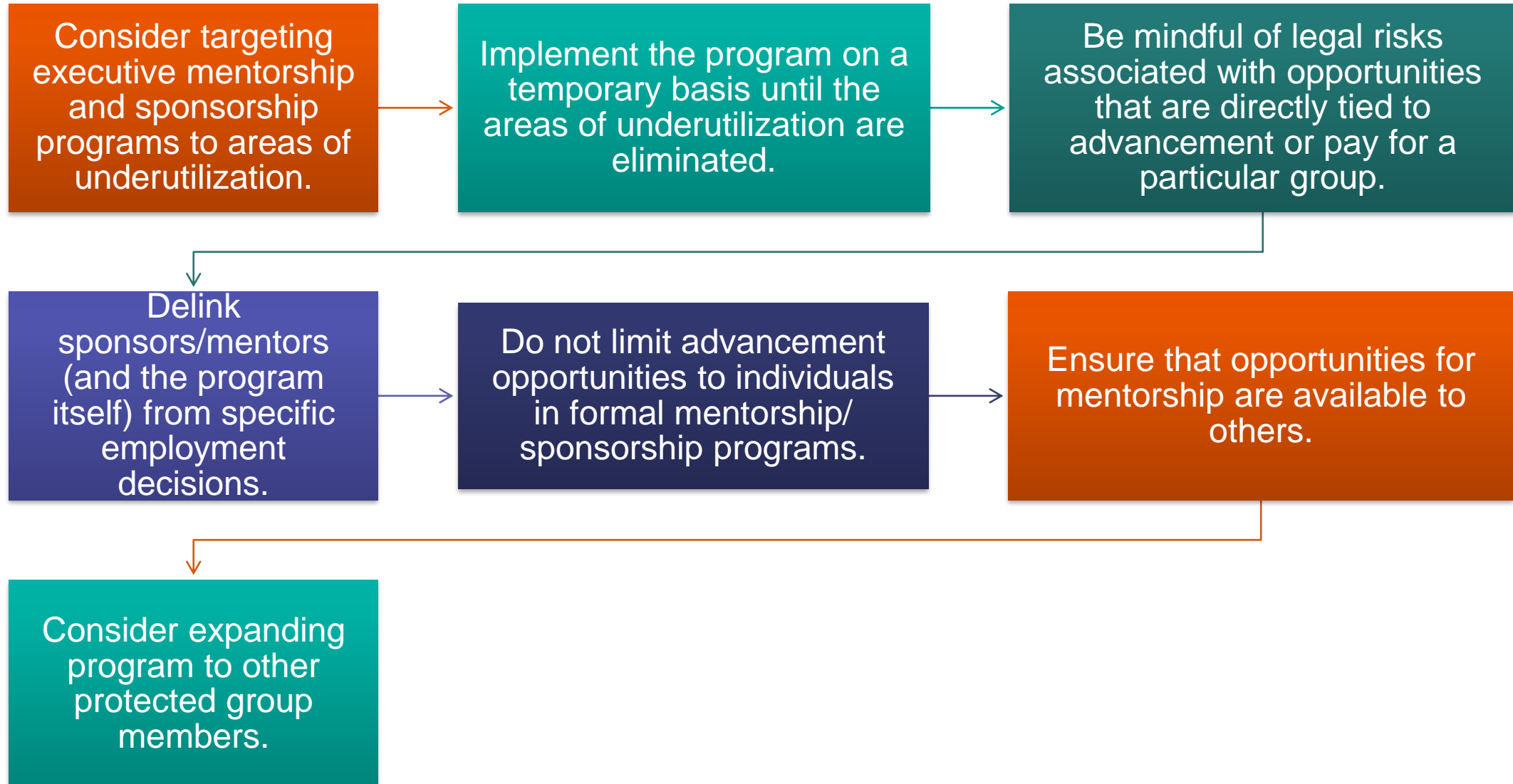
What Problem Are We Trying to Solve?



Cultural Assessments



Employee Development: Executive Mentorship and Sponsorship



Developing an Effective Inclusion & Diversity Structure

Implicit and Unconscious Bias Training

- Corporations are showing a willingness to identify and discuss implicit bias through training.
- However, it is important that this training be designed, approached, and implemented in an appropriate manner

- Focus on educating managers and leaders to make business-related not facts, not “gut-based” decisions based on intuition.
- Focus on addressing awareness to build an Inclusive workplace
- Highlight how the Company’s policies and practices work to ensure implicit bias plays no role in decision-making.
- Don’t suggest that employment decision-making at the Company is affected by implicit bias.

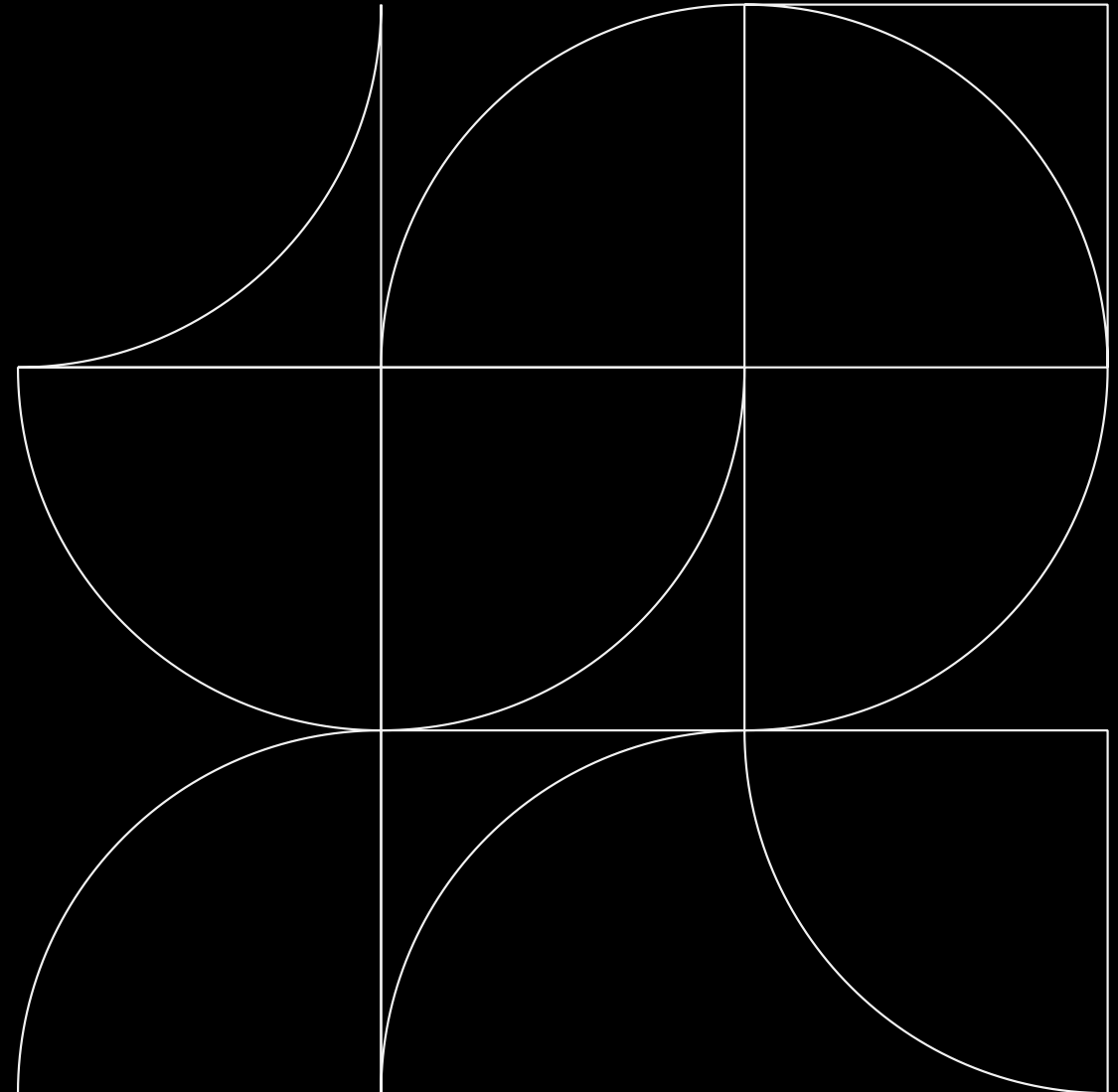
- Consider “Disclaimer” Language:

The Company’s educational information on implicit bias does not mean that implicit biases are in fact entering into workplace relationships or decisions made at the Company. Provide this information as educational background that can help highlight the importance of the Company’s non-harassment and non-discrimination policies and practices.

Considerations for Employee Resource Groups

- Employee Resource Groups and Internal Diversity Councils show company commitment and secure creative thinking, but:
 - Membership should not be exclusive
 - Know your goals! Avoid agendas and soapboxes
 - ERGs should have support from the top
 - Structure, policy and procedure should be set, including operational guidelines
 - Roles should be defined
 - Impact should be measured and publicized
 - Global reach should be evaluated

Other Trends in Inclusion & Diversity



Embracing an Intergenerational Workplace

“WITH SO MANY MORE PEOPLE WORKING AND LIVING LONGER, WE CAN’T AFFORD TO ALLOW AGE DISCRIMINATION TO WASTE THE KNOWLEDGE, SKILLS, AND TALENT OF OLDER WORKERS.”

**EEOC Commissioner
Victoria A. Lipnic**

Create programs designed to facilitate multi-generational cooperation

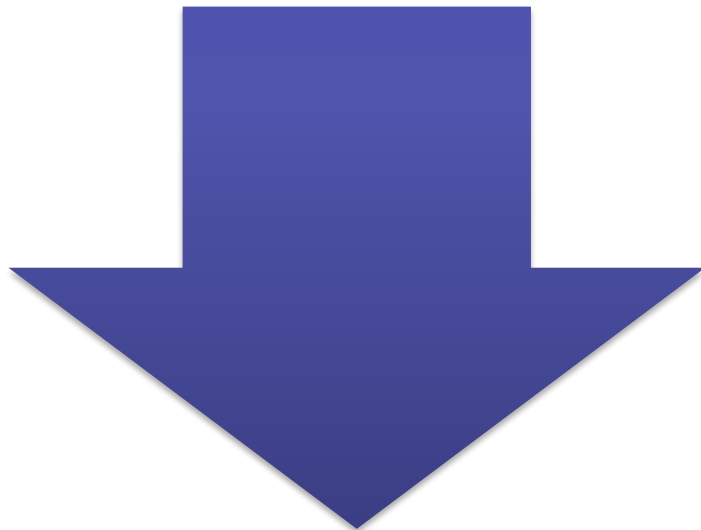
- Foster “age neutral” policies and processes
- Audit working environment to remove barriers
- Invest in skill development of experienced workers, encourage participation
- Facilitate productive coexistence between multi-generations at work
- Review job postings for language that indicates a preference for younger workers (e.g., maximum experience, digital native, recent college grad, energetic, or dynamic)

Diverse Applicant Slates – Common But Best Used In Targeted Manner



Ensure

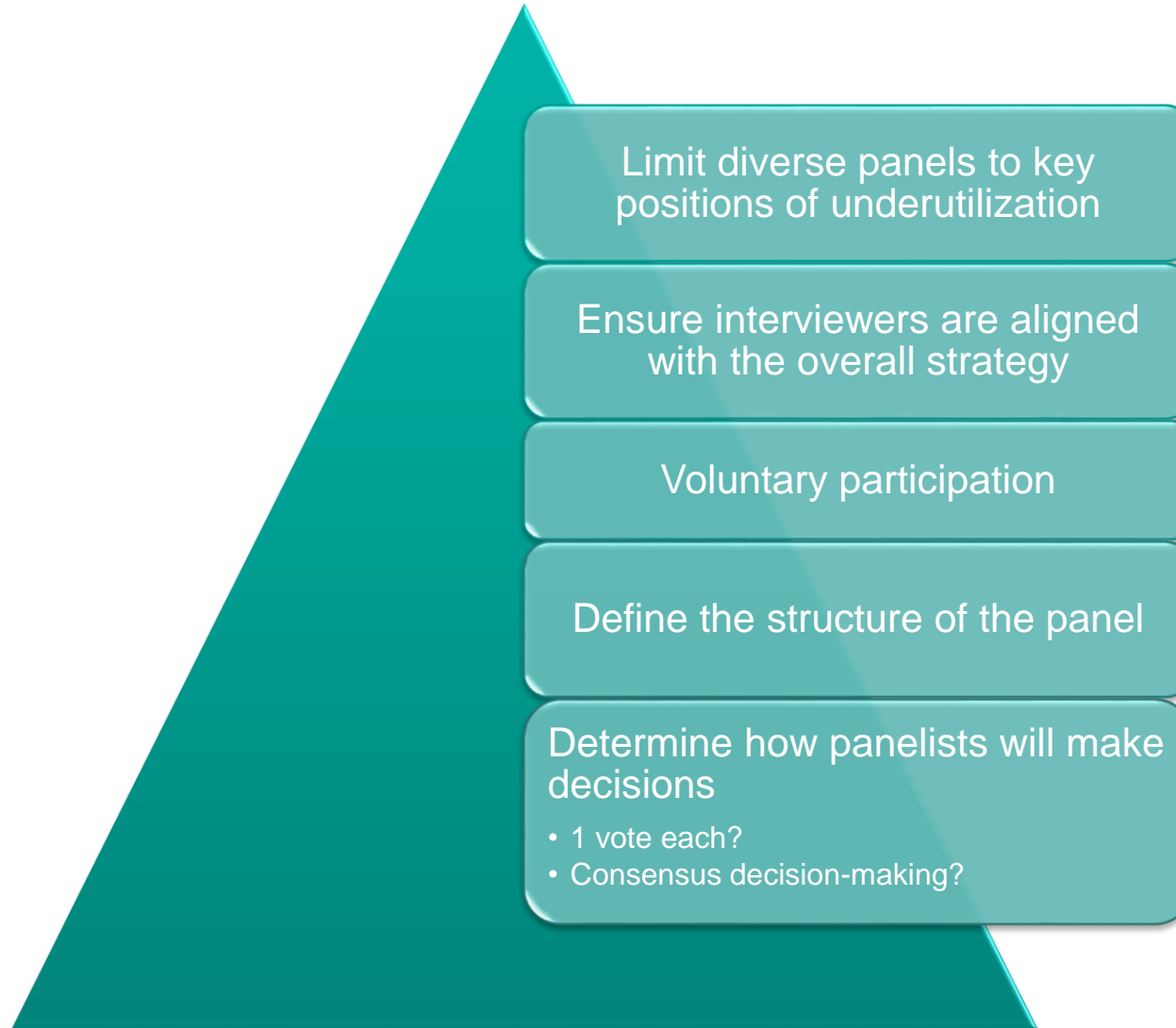
- Focus is on key position where underutilization exists
- A clear definition of what is considered a “diverse slate.”
- Diverse slate requirement is a “floor,” not a ceiling.
- Consistent hiring standards for all candidates
- Candidates should meet the qualifications
- All final hiring decisions are made based upon each candidate’s specific qualifications



Never

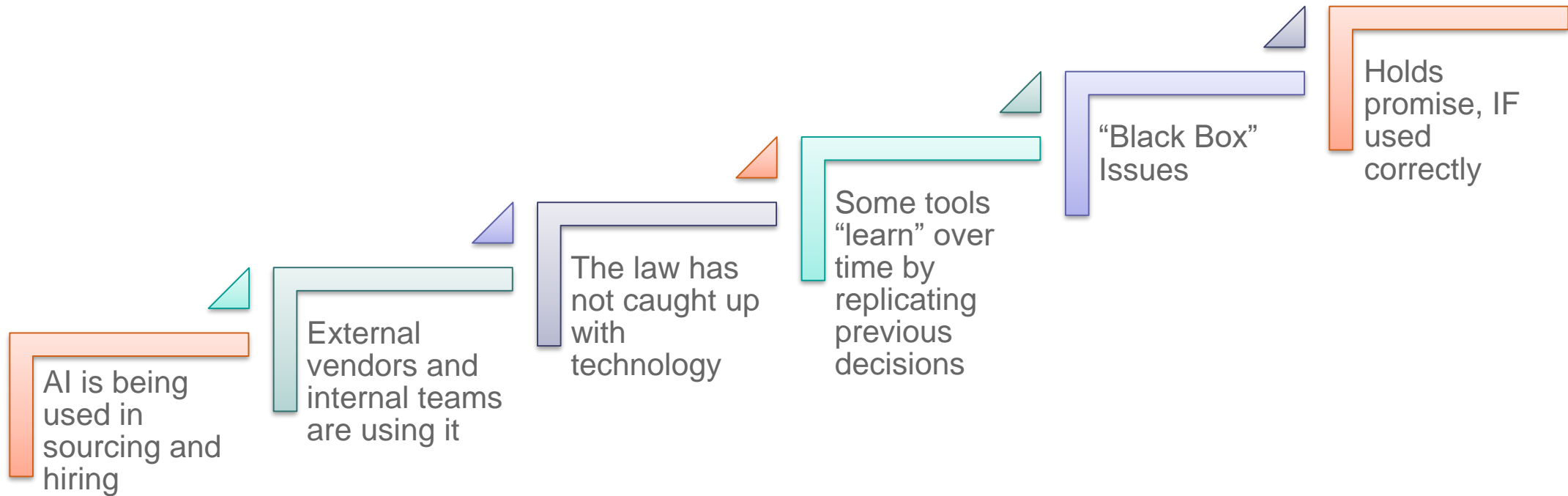
- Use quotas
- Maintain separate lists of minority or female candidates.
- Change neutral selection criteria.
- Numerically rank candidates who are being considered for inclusion in a hiring slate.

Diverse Interview Panels – Common But Risky



Artificial Intelligence

“AI can help us overcome biases instead of perpetuating them, with guidance from the humans who design, train, and refine its systems.” [MIT Sloan Management Review](#)



Discussion

