



Managing Your Workforce Through the Current Social and Political Climate

Kori S. Carew, Esq. Ameena Y. Majid
Christine Hendrickson Thomas J. Posey

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Speakers



Kori S. Carew, Esq.
*Chief Inclusion & Diversity
Officer*
kcarew@seyfarth.com



Christine Hendrickson
Partner
chendrickson@seyfarth.com



Ameena Y. Majid
Partner
amajid@seyfarth.com



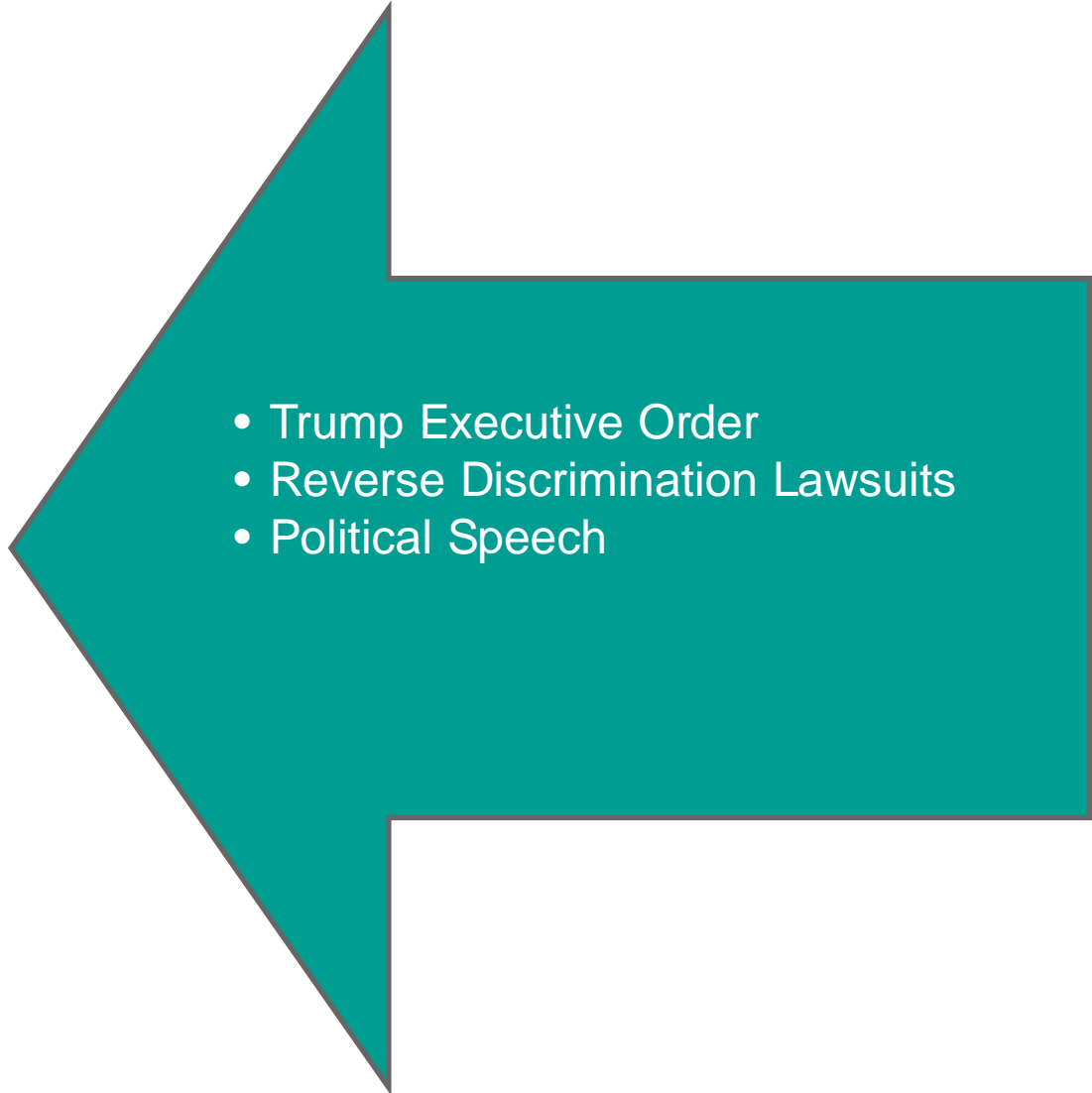
Thomas J. Posey
Partner
tposey@seyfarth.com

Agenda

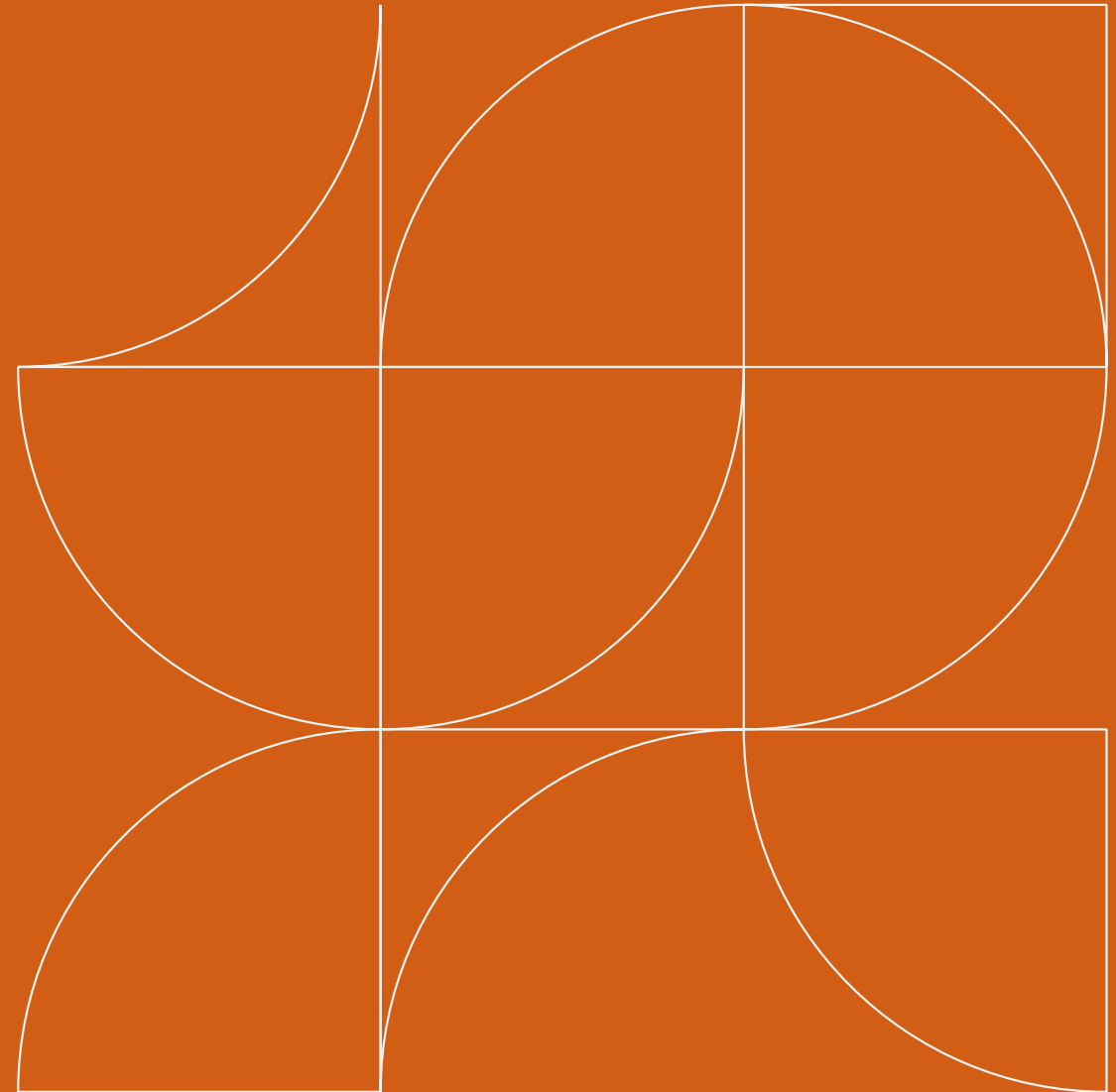
- 01** Best Practices for Political and Social Justice Speech in the Workplace
- 02** Diversity and Inclusion Legal Landscape
- 03** Innovatively Responding to 2020 and "The Belonging Project"
- 04** The Rise of the "S" in the ESG Umbrella
- 05** Q&A

Two Movements Impacting Employers

- 
- Increased Focus and Support of Inclusion, Equity, and Diversity Initiatives
 - Transparency & ESG Reporting
 - Shareholder Lawsuits
 - Pay Equity Reporting
 - Political and Social Justice Speech

- 
- Trump Executive Order
 - Reverse Discrimination Lawsuits
 - Political Speech

Best Practices for Political and Social Justice Speech in the Workplace



Can Employers Take Any Action If An Employee...

- Refuses to take off a MAGA baseball cap after clocking in?
- Came to work the morning after the debates and told a coworker “you are an idiot if you still want to vote for [insert your least favorite candidate] after watching that”?
- Asks a coworker to stop wearing a “Black Lives Matter” mask to team meetings?
- Displays political posters and buttons on the outside of their cubicle near the entrance to the office?



Can We Limit Employees' Political Speech and Conduct at Work?

- Public vs. Private Employers
- First Amendment Rights
- National Labor Relations Act (NLRA) Protections
- Anti-Discrimination Laws

Best Practices for Employers

Civility and Productivity...without violating employees' legal rights

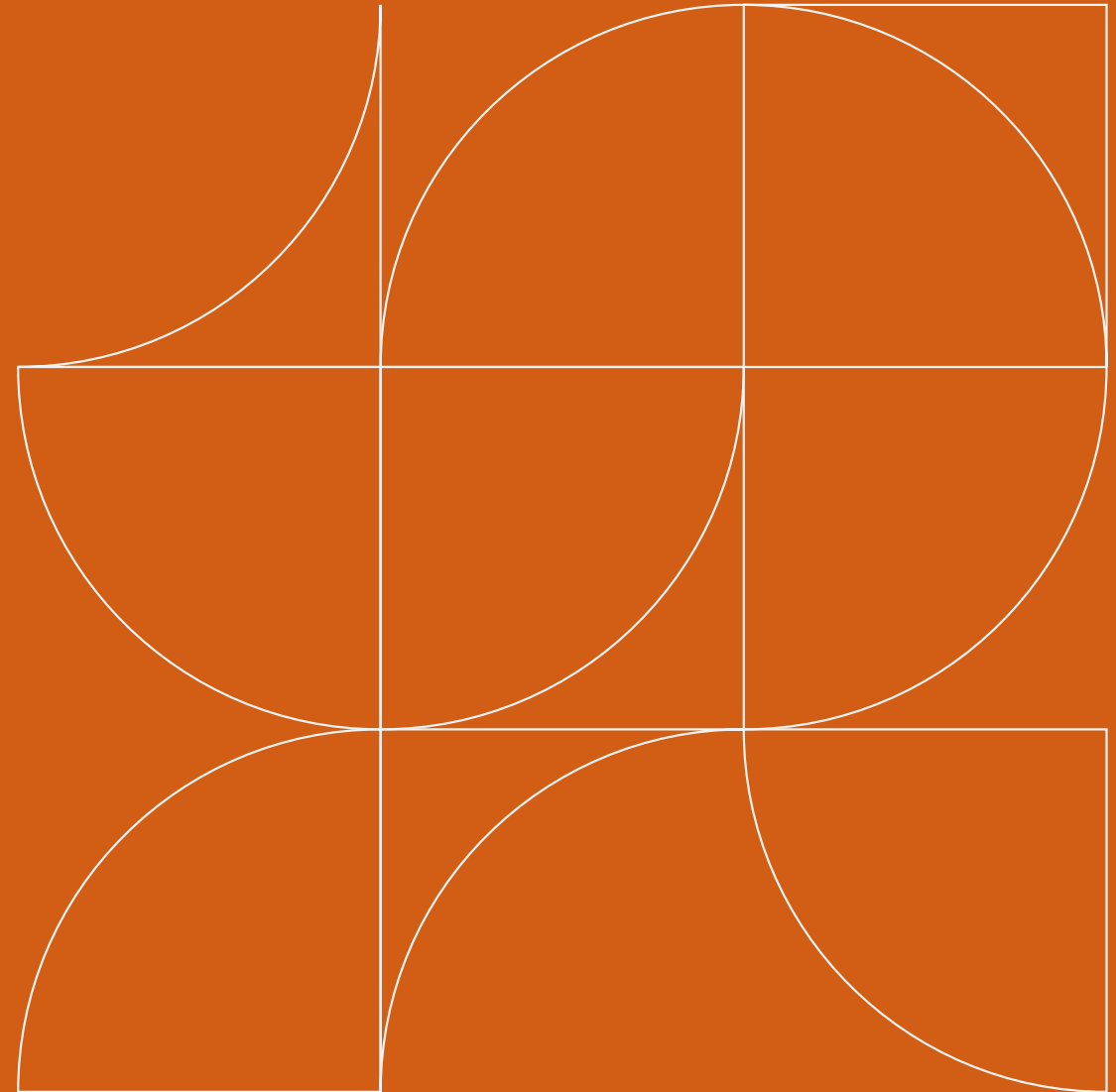
- Communication is Key
 - Clear expectations
 - Explain policy and purpose
- **CONSISTENT** practices and enforcement of the policies underlying them
 - Dress code
 - Attendance
 - Bulletin boards
 - Email
 - Conduct
- Discrimination, Harassment and Retaliation
- Productivity – get back to work!

Take Proactive Steps

- Managers and Supervisors
 - Training on policies
 - Also on action steps in response to various conduct
 - Don't overreact
 - Keep workplace moving
- Employer Statement
 - Acknowledge turbulent political and social climate
 - Underscore commitment to policies and practices
 - Encourage respect and professionalism
 - Open Door Policy



Diversity and Inclusion Legal Landscape



Renewed Focus and Investment Inclusion, Equity, and Diversity Programs

Harvard
Business
Review

Race | We're Entering the Age of Corporate Social Justice

RACE

We're Entering the Age of Corporate Social Justice

by Lily Zheng

June 15, 2020

Summary Save Share Print \$8.95 Buy Copies

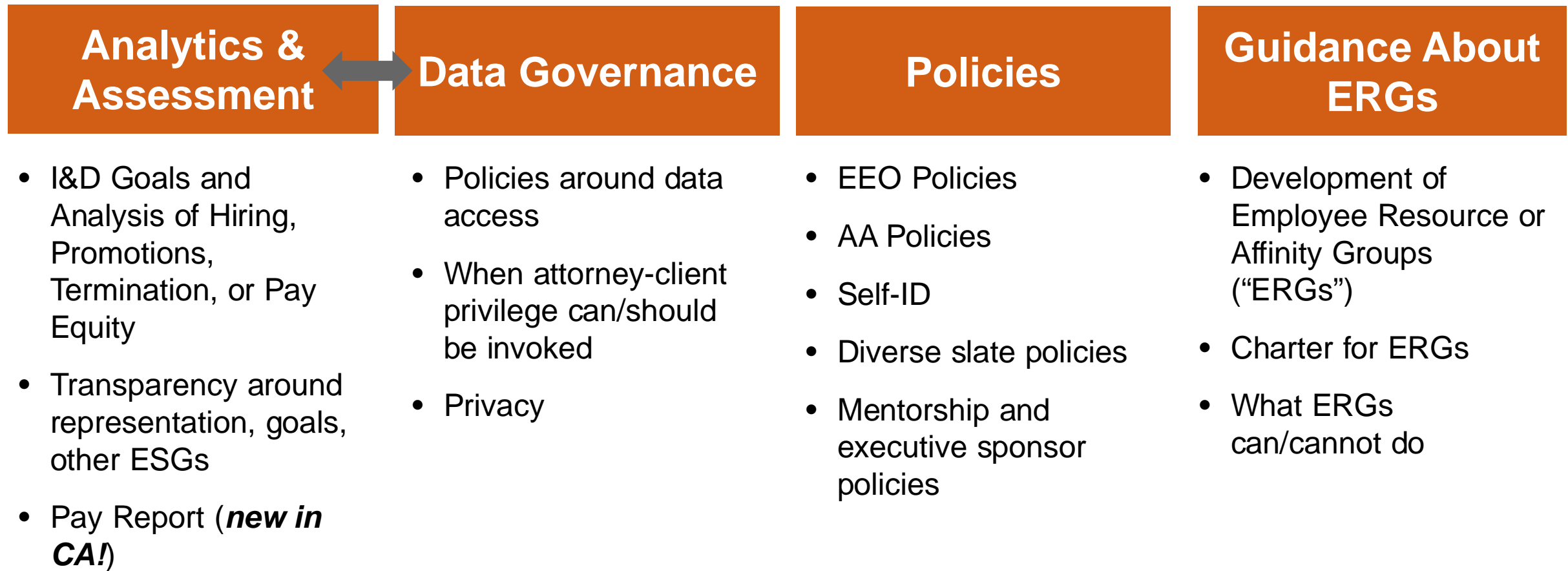


The New York Times

Here's What Companies Are Promising to Do to Fight Racism

Corporate America has pledged millions to social justice efforts since the killing of George Floyd. But some businesses have gone further, committing to concrete changes in their practices.

Key Areas of Employer Focus on Inclusion, Equity, and Diversity



← General Legal Framework of Inclusion Programs →



Title VII permits diversity efforts designed to open up opportunities to everyone...

...Further, the Commission believes that “persons subject to Title VII must be allowed flexibility in modifying employment systems and practices to comport with the purposes” of the statute. However, employers are cautioned that very careful implementation of affirmative action and diversity programs is recommended to avoid the potential for running afoul of the law.

EEOC Compliance Manual
Section 15-VI(C) Diversity and
Affirmative Action



Trump Executive Order on “Race and Sex Stereotyping”

- On **September 22, 2020**, President Trump issued an Executive Order entitled “**Executive Order Combating Race and Sex Stereotyping**”
 - Prohibits **employment training** that implicates race or sex stereotyping, “scapegoating” or “divisive concepts” like some types of unconscious bias or white privilege training
 - **New notice and posting requirements**, including “hotline” that is already live
 - OFCCP will **initiate a process for soliciting employee training materials and related information** used by contractors relating to diversity and inclusion efforts



Timing on Effectiveness

- The Order is being **interpreted as being effective immediately**
 - The Executive Order indicated that key provisions that impact federal contractors will only be applicable to contracts signed after November 22, 2020 but OFCCP is taking the position that the “divisive” concepts may violate the Executive Order so they were effective upon signature
- The Executive Order will **most immediately impact federal contractors**, federal agencies and federal grant recipients
 - But the Executive Order also calls upon the Attorney General to assess the extent to which such workplace training may contribute to a hostile work environment and give rise to potential liability under **Title VII**
 - If this is determined to be a Title VII violation, the DOJ and the EEOC “shall issue publicly available guidance to assist employers in better promoting diversity and inclusive workplaces consistent with Title VII.”

Department of Labor is probing Microsoft's goal to double the number of Black managers, senior leaders, and individual employees in the US by 2025

Responding to the OFCCP on our June diversity commitments

Oct 6, 2020 | [Dev Stahlkopf - Corporate Vice President and General Counsel](#)



In a spirit of transparency, we want to disclose that Microsoft was contacted last week by the United States Department of Labor Office of Federal Contract Compliance Programs (OFCCP) regarding some of the commitments we made in June to address issues faced by the Black and African American community. Microsoft, like all federal contractors, is subject to several OFCCP requirements, including those with respect to employment practices. Specifically, the OFCCP has focused on whether Microsoft's commitment to double the number of Black and African American people managers, senior individual contributors and senior leaders in our U.S. workforce by 2025 could constitute unlawful discrimination on the basis of race, which would violate Title VII of the Civil Rights Act.

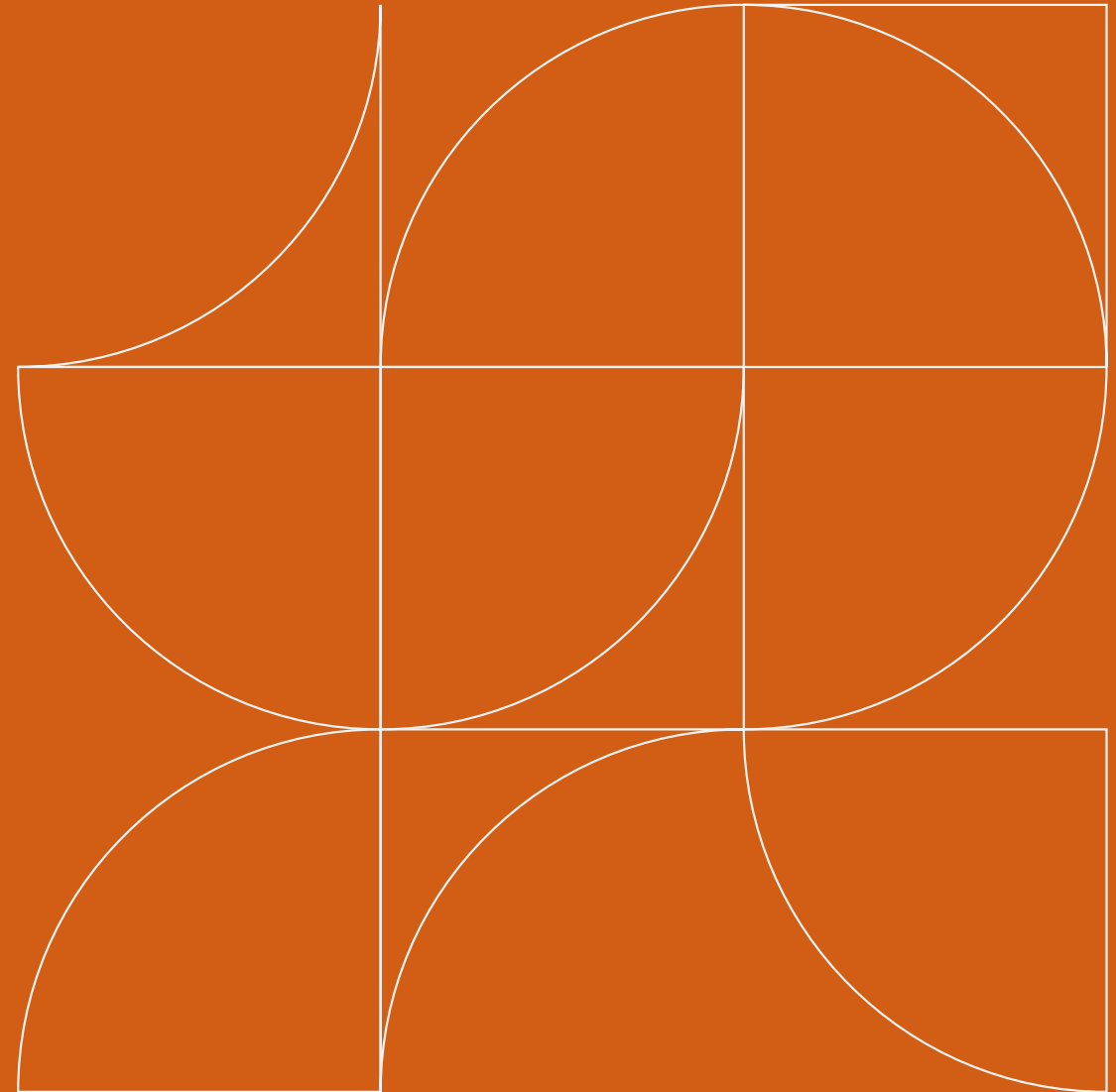
We have every confidence that Microsoft's diversity initiative complies fully with all U.S. employment laws. We look forward to providing the OFCCP with this information and, if necessary, defending our approach.

To help achieve our diversity goals, in an announcement on June 23 we committed to invest in our business ecosystem and broader communities, and to invest an additional \$150 million over five years in our own internal diversity and inclusion programs. As part of this effort, we will also continue our work training managers and strengthening career planning and talent development.

Bottom Line: Proceed but Proceed with Caution

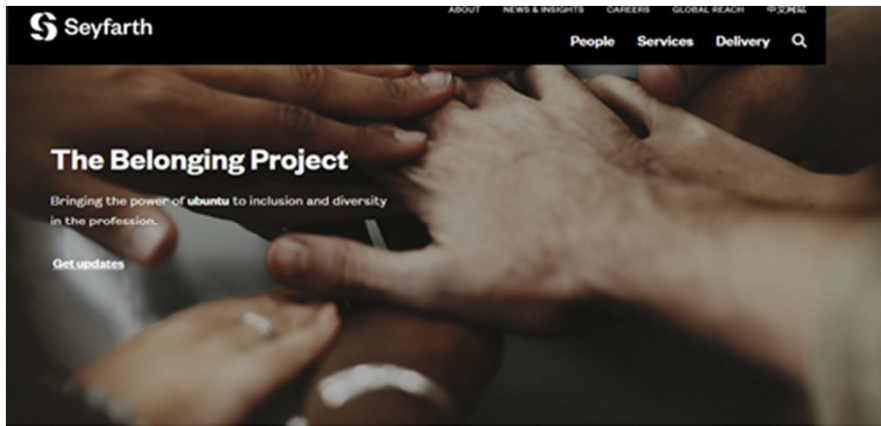
- But failure to proceed has significant risks:
 - Employee morale and productivity
 - Access to the best workforce and ideas
 - Lawsuits
 - Reputational risk
 - Employee belonging

Innovatively Responding to 2020 and The Belonging Project



The Belonging Project

The Belonging Project is a national effort to support and build community among diverse law students, attorneys, and their allies to combat the impact of COVID-19 on diversity in the profession. It brings together legal industry partners to provide tools, resources, and programs to support the continuing personal and professional development of diverse legal talent. Our esteemed partners include:



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How To Get Involved

Virtual Hub Resources

- Personal development
- Professional development
- Mental health
- Job search
- More

Webinars

- Diverse law students
- Diverse lawyers
- Leaders

Mentoring Program

- Formal mentoring program between participants
- Training provided

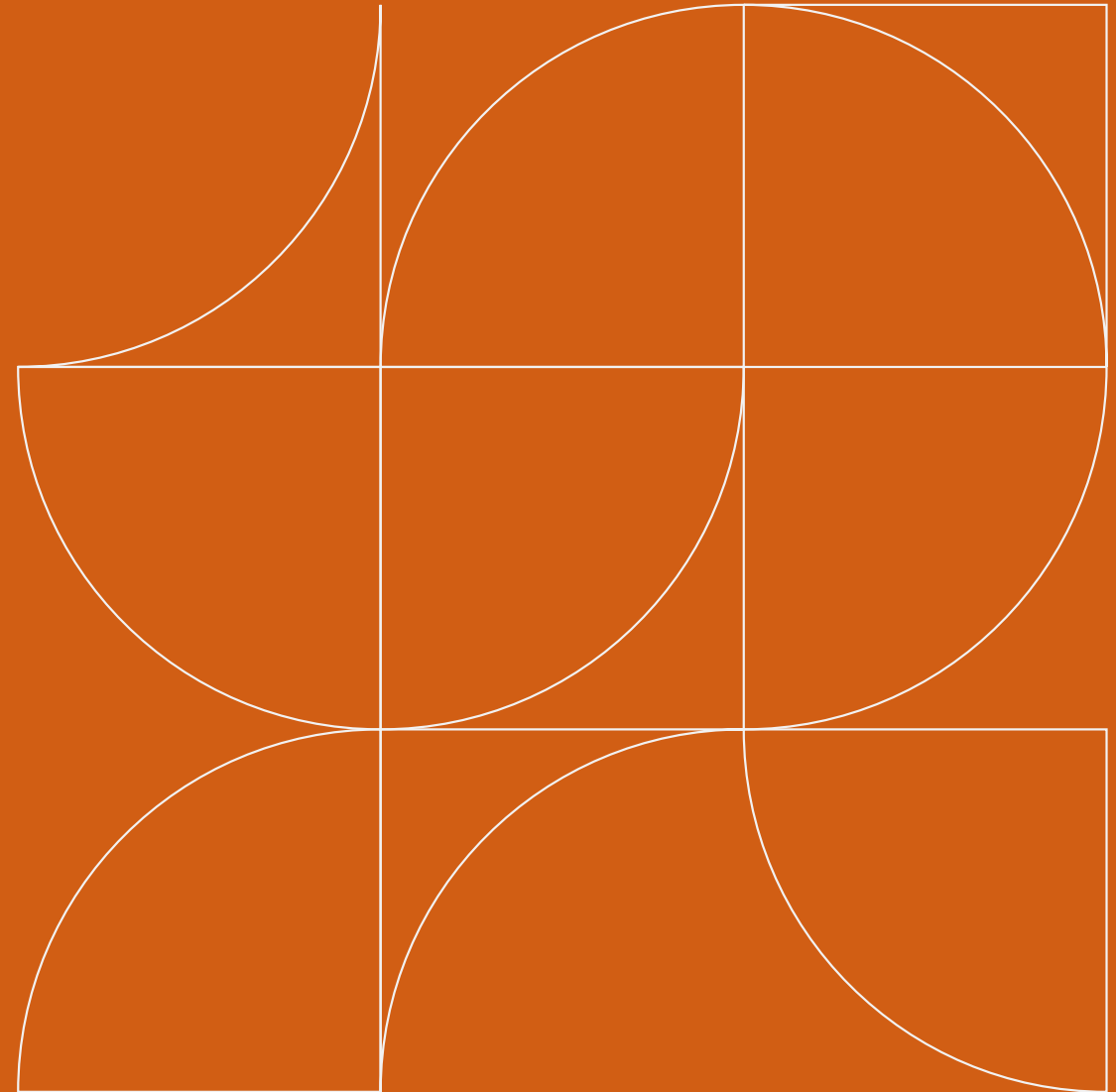
Coaching

- Executive coaching model to help participants achieve their goals
- 3 months one-on-one coaching
- Executive coaching support provided to coaches

Library of Resources Available at <https://www.seyfarth.com/the-belonging-project.html>

- [Coming Soon: A Father-Son Generational Look at Their Experiences as Hispanics in the Law Profession](#)
- [Diversity Metrics and Goal Setting](#)
- [Driving Innovation with Flexible Work: Fostering D&I, Retaining Talent, and Meeting Client Demands](#)
- [Effectively Using Self-Evaluations for Career Success](#)
- [3 Ways Lawyers Can Set Boundaries Without Losing Respect or Credibility](#)
- [Finishing Touches: Revising, Editing, and Proofreading Your Own Work](#)
- [Thought Leadership Strategies for Attorneys](#)
- [The Power of Fear](#)
- [Making Now DOable: Discovering Career Opportunities During Complex Times](#)
- [Alternative Legal Careers: A Discussion on Non-traditional Paths for Juris Doctors](#)
- [Unleashing the Power of Mentoring through Inclusive Leadership: A conversation with Sozi Pedro Tulante and Satra Sampson-Arokium](#)
- [You Can't Do It All: Juggling Work, Children, and Life](#)
- [Conversations on Anti-Black Racism Part II: Q & A Session](#)
- [Grammar and Punctuation: What You Didn't Learn in School](#)
- [Purpose of Privilege: How to be an Ally for Systemic Culture Change](#)
- [Mock Interview Skills: How to Prepare and Get the Most from the Experience](#)
- [Influence in Social Media](#)
- [Wills, Walls, Wells® Webinar](#)
- [Navigating Conversations on Anti-Black Racism - 7 Do's and Don'ts](#)
- [The Art of Self Promotion](#)
- [Better Lawyering Through Mindfulness—Finding Ease During Uncertainty](#)
- [Put Me in Coach: Being an Ally in Action](#)
- [Virtual Interview Preparation Skills: Preparing for a Strong Performance by Video](#)
- [Navigating COVID-19 Uncertainty for Diverse Attorneys & Law Students](#)
- [Engaging Hearts and Minds: Leading in the Midst of a Pandemic and Racial Strife](#)
- [The Belonging Project: National Bar Leaders Discuss Prioritizing D&I During the Pandemic](#)
- [The Belonging Project: Advice I Would Give My 30 Year Old Self](#)
- [The Belonging Project: Soliciting Feedback During Crisis, Part 2](#)
- [The Belonging Project: Soliciting Feedback During Crisis - Part I](#)

The Rise of “S” Under the ESG Umbrella



The World of ESG and Sustainability

Environmental

- What are the natural resources a company uses in business operations (e.g., energy, water, land use, chemicals and plastics)?
- How does a company's use of natural resources impact the environment or climate?

Social

- Human capital (well-being, fair and equitable pay, health and safety, talent management, inclusion, equity and diversity)
- Supply chain management
- Human rights and labor standards
- Data Privacy
- Community & stakeholder engagement

Governance

- Board structure and independence
- Business ethics
- Executive compensation
- Cybersecurity
- Anti-Corruption
- Accounting practices

ESG Ecosystem: Increasing Expectations, Confusion and Complexity



SEC Requirements/Views

- Human Capital
- Investor Advisory Committee Recommendation for ESG disclosure



Ratings and Rankings

- Sustainalytics
- MSCI
- ISS
- 120+ raters & rankers



Investor Requests

- BlackRock
- SSGA



International Drivers

- SDGs
- WEC Metrics
- UN Global Compact



Voluntary Disclosure Frameworks

- SASB
- GRI
- UNGPs (Human Rights)
- TCFD (Climate)



International Regulatory Frameworks (sampling)

- UK gender pay gap reporting
- EU legal quotas for women on boards
- Proposed ESG Disclosure Rules
- OECD Guidelines on Multinational Enterprises
- Modern Slavery Acts (UK, AUS)

ESG Disclosure Litigation Risk

- Liability Theories
 - Plaintiffs Federal securities fraud claims
 - Consumer protection or consumer fraud claims
 - Includes shareholders, non-governmental organizations and consumers
- Multiple Industries
 - Automotive, metals, mining, consumer goods & technology
- ESG Topics at Issue
 - Ethics, corruption, use of forced or child labor in supply chains, ethical sourcing, safety, the environment and diversity



Disclosure Guideposts

- Threshold Considerations
 - Understand risk tolerance and whether the organization is disclosure-oriented or not
 - Know **why** the organization is disclosing
 - Consider audience, context and timing
 - **What** is the organization willing to disclose
- Crafting the Disclosure
 - Consider aspirational or forward looking statements
 - Include cautionary language
 - Confirm any factual statements can be verified
 - Ensure consistency across media (social media, sustainability reports, contracts, impact reports, packaging, investor statements)
 - Disclose areas for improvement
- Identify relevant stakeholders and create a cross-functional team
- Create best practices for organization & trainings

Board Oversight & Management Stewardship

Board & Management Alignment and Internal ESG Reporting

Board's Role

- Expertise and Composition
 - Self-Assessment
 - Diversity
- Full Board or Committee Responsibility
- Oversight of Strategy and Implementation
 - Understand disclosure risks and opportunities
 - Management's understanding of multi-stakeholder concerns and priorities
 - Assess external reporting processes and controls

Management

- Strategy Development
 - Assess ESG risks and opportunities
 - Material or relevant to company – both financially and non-financially
 - Consider stakeholder priorities
 - Establish long- and short-term goals
- Implementation via Cross-Functional Team
 - Resource allocation
 - Policy and procedure development and/or update

Executive Compensation Considerations

Challenges

- Peer group drives many metrics
- ESG metrics (beyond health and safety and diversity) are outliers
- Ascribing measurements to non-financial metrics
- Verifying achievement

Benefits

- **Board governance tool** to drive strategy and reward management
- Increases accountability
- Balance mitigating risk with creating opportunity
- Signals the company's values and purpose to the stakeholders (e.g., investors, employees, and communities)
- Reflects a move towards stakeholder capitalism
- Creates a new dimension of transparency (particularly for public companies required to explain its compensation philosophies in the annual proxy)
- **Possible way to address the pay gap, diversity, environmental goals and other ESG targets**
- Cultural component

Questions?



Kori S. Carew, Esq.
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Partner
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Partner
amajid@seyfarth.com



Thomas J. Posey
Partner
tposey@seyfarth.com

Thank You!

