DEI in an Era of Unrest: A Few Truths and a Path Forward

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Anti-diversity, equity and inclusion (DEI) activity is not new, but it is intensifying, having been emboldened by the Supreme Court ruling on Affirmative Action in higher education and the divisive nature of current politics and policy.

Corporations are navigating lawsuits, retraction letters, calls for EEOC investigations and considering what a possible second Trump administration could mean for their DEI initiatives. Even so, Vision 2024, Teneo's annual CEO & Investor Outlook Survey found that half of U.S. CEOs are continuing or accelerating their DEI programs. Fifteen percent are scaling back their programs and the remaining companies—over one-third—are taking time to re-evaluate. Below is an analysis of the landscape with three critical considerations for businesses as they navigate and review DEI policies and practices.

Over 20 states have outlawed or restricted DEI initiatives. Most state-level changes are aimed at dismantling DEI initiatives at public institutions, such as defunding DEI offices at public universities and schools or banning the discussion of "divisive concepts" relating to race, gender or sexuality. Penalties for failing to comply vary from leaving institutions at risk of having funding withheld to allowing affected parties to sue.

Legal experts are conflicted on the applicability of these arguments on corporate programs. The business and investment community alike are closely monitoring pending and imminent litigation. While the success of efforts against corporate DEI has been minimal, the chilling effect has taken root.

Although legal implications remain unclear, some companies have changed aspects of their DEI programs. Recent media coverage highlighted changes at companies sued by America First Legal and American Alliance for Equal Rights. Most of the changes made so far are to broaden talent, supplier and investment initiatives so they are no longer limited to a subset of demographic groups such as women or people of color. Some of these have also reframed DEI goals and compensation incentives. Despite these changes, the vast majority of corporations reaffirmed their commitment to DEI and their strategies remain largely intact. Core DEI initiatives, such as parental leave and accessible facilities, and policies such as equal pay and anti-harassment, are not being broadly questioned.

Only 15 S&P 500 companies have released ESG reports so far in 2024. Our analysis of this small sample indicates an ongoing commitment to DEI despite prevailing challenges. Of the 15 S&P 500 companies that have released ESG reports so far in 2024, all continue to reference “DEI” in their reports. Over 70% of these companies maintain talent programs for under-represented groups and supplier diversity programs, both of which are under scrutiny in the current political climate. While 40% have established DEI goals, two have removed references to specific objectives. It is unclear whether they are still pursuing these goals.

The debate will get louder and possibly more contentious as pro-DEI stakeholders ramp up and start holding companies accountable to DEI commitments made and pushing for greater results. The Congressional Black Caucus, with the support of the Congressional Hispanic Caucus and Congressional Asian Pacific American Caucus, is presently pressing Fortune 500 companies to report on their commitment and progress on DEI. Underrepresented racial and ethnic groups, as well as veteran and women-focused business advocacy groups, sent an open letter to Fortune 500 CEOs underscoring the business value of DEI and calling on companies to continue investing in DEI as a prudent way of helping to maximize shareholder returns. The [open letter](#) cites the Black Economic Alliance Foundation's Harris Poll finding of broad public support for corporate diversity as well as a Morning Consult survey for the Public Private Strategies Institute that found "the majority of senior executives across political affiliations said diversity initiatives play a critical role in the success of their companies."

There are important conversations to be had around how DEI is applied in business. Not because of screaming and sometimes misleading headlines and threats, but because companies should focus on what advances business objectives, including marketplace growth, employee enhancement and community engagement for all. Re-evaluating DEI-related practices to ensure optimal results is a practice that should be undertaken in other strategic business areas. There is more to unpack to fully understand how aspects of corporate DEI will, can and should evolve for better results.

Below are three important considerations that provide greater context and direction for businesses as they review their own DEI policies and practices.

1. Don't confuse Affirmative Action with DEI

Recent media coverage highlights instances of corporate pullback from DEI, but most DEI initiatives are not universally contested. Parental benefits, equal pay and sexual harassment policies are just a few examples. The programs being targeted are largely those serving a subset of demographic groups with talent programs (hiring, internships, mentorship, development) or resources (supplier diversity, investment). In a separate analysis, Teneo identified 17 companies that have altered their DEI programs this year. 16 of those reiterated a commitment to DEI. Changes to-date have predominately involved scaling back communications regarding these initiatives rather than completely withdrawing them.

The debate in the U.S. regarding DEI often centers on race and sexual orientation, but DEI is much broader. Diversity encompasses characteristics such as veteran status, disability, age, religion, marital status, etc. Equity and inclusion are business practices and company culture elements that are less challenged in the U.S. and around the world. When reviewing DEI initiatives and communications, companies should operate under these more complete definitions and impacts.

2. Transparency cuts both ways

Corporate DEI disclosure continues to advance. As part of corporate DEI programs, transparency increases as companies look to demonstrate progress. Investors have actively engaged with companies and exerted pressure through shareholder proposals to enhance

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transparency further. Last year saw an uptick in proposals questioning the congruency between stated values and political contributions. We anticipate this trend will continue, along with investor pressure on companies that have reduced their DEI programs.

Regulation around the world will continue with this trend. The new ESG regulation in Europe under the Corporate Sustainability Reporting Directive (CSRD) requires companies operating in the European Union to disclose a broad range of ESG topics, including 17 DEI measures and requirements. The CSRD is in effect for EU-based companies and is expected to apply to non-EU companies in 2026. A growing number of countries are implementing targets for female representation on boards, including the United Kingdom, European Union, Hong Kong and Singapore (adopted in 2022). In the United States, the SEC is expected to release an updated Human Capital Disclosure Rule later this year, and a new law in California will require PE and VC funds to disclose portfolio company diversity metrics.

The wealth of data and transparency surrounding DEI initiatives have facilitated a more sophisticated understanding of these topics. Stakeholders have been able to track corporate performance over time, recognizing corporate progress on DEI and enabling them to hold companies accountable. This increased scrutiny will continue to pressure companies to maintain their commitments and makes it more difficult for companies to retract these programs. As they manage DEI strategies, corporations should consider how historic data disclosure may have shaped expectations.

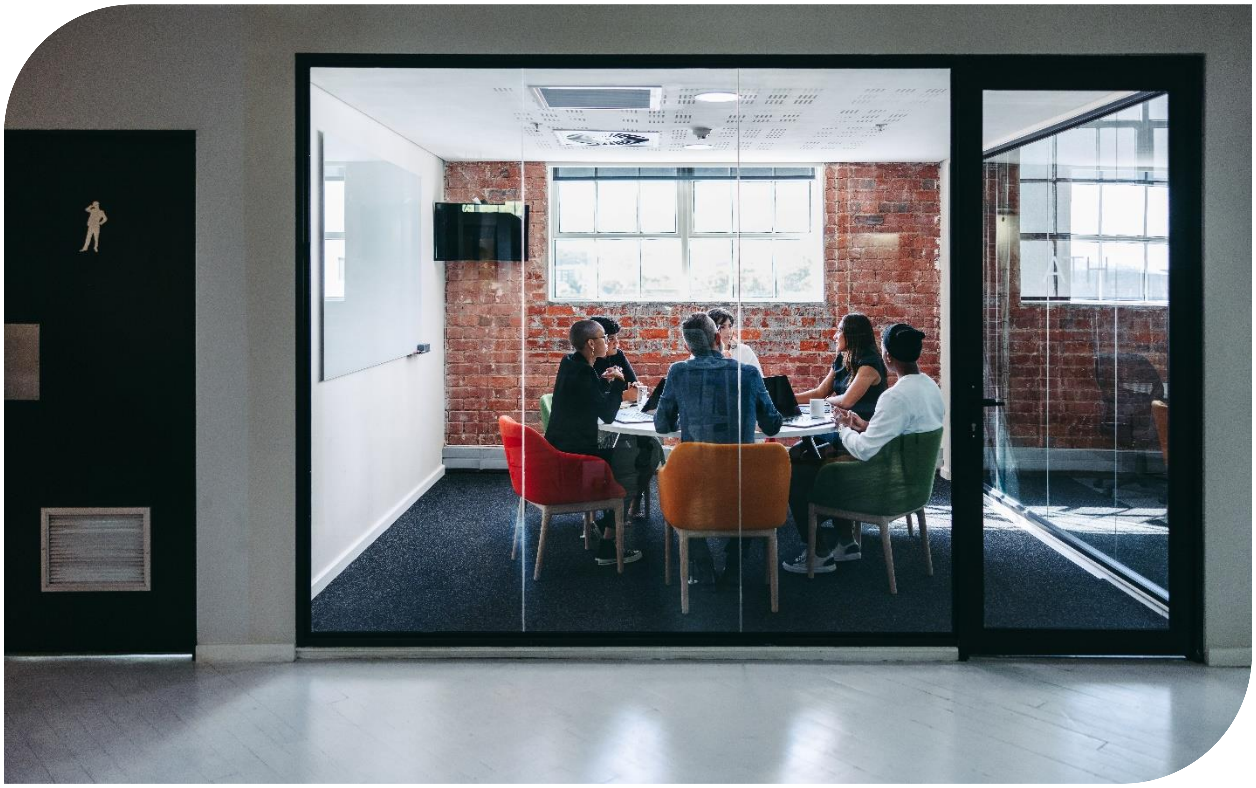
3. Know your audience

In the current environment, companies face the challenge of balancing legal risk against potential reputational, financial and operational risks of divesting from corporate DEI initiatives. Adopting a multistakeholder perspective is essential when contemplating significant alterations to DEI goals or programs. Perspectives may vary even within stakeholder groups, so it's crucial to carefully assess how efforts will be perceived.

For example, board diversity language is currently being reviewed to mitigate legal risk, but proxy policies at some of the largest investors still include specific callouts that boards consider diversity on both personal characteristics (e.g., race, gender) and skillsets. Diversity goals are another example around which stakeholders are clashing. Stakeholder perspectives are nuanced, with even supporters of DEI debating whether diversity goals can lead to unintended consequences.

One solution is emphasizing the link between DEI and business outcomes. There are also important legal considerations for communicating the intent and implementing programs. By having an ingrained process to capture key stakeholder perspectives and partnering with legal, government affairs, HR and communications, corporate DEI leaders can better design DEI programs and communicate them to maximize efficacy, manage risk and best engage key stakeholders.

DEI will remain a part of business practices and be a hot topic for the foreseeable future. How DEI should or will evolve is the question facing CEOs. Corporations must be prepared to navigate all manners of inquiry as they strive to boost productivity and performance through policies that are equitable for all. Cutting through the heated debate and focusing on factual context will enable better decision-making and profitability.



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