

Morgan Lewis



Managing the Global Workforce

Webinar Series 2014

Navigating Global Diversity Trends and Requirements

May 29, 2014

Overview

- Legal Landscape
 - United States
 - Europe
 - Japan
- Recent Global Issues
 - Goals
 - Boardroom Developments
 - Data Collection/Privacy

Legal Landscape

United States

United States

- Increased Government Scrutiny
 - EEOC Focus on Systemic Litigation Initiative
 - OFCCP's Pursuit of Compensation Claims
 - Dodd-Frank Wall Street Reform and Consumer Protection Act

EEOC Focus on Systemic Litigation

- In February 2012, EEOC approved a Strategic Plan for 2012-2016. The plan reiterates EEOC's intent to pursue systemic cases and outlines goals and achievement benchmarks over the next four years, including its intent to set numerical targets regarding:
 - The percentage of cases in its litigation docket that are systemic cases
 - The percentage of case resolutions containing targeted, equitable relief

Types of Affirmative Action and/or Diversity Programs

Initiative

Remedial Preferences – Race/Gender decisive factor in selection decisions

Voluntary AA/Diversity Goals – Race/Gender only one factor in selection decisions

OFCCP Affirmative Action Plans (AAPs)
(required as federal contractor)

Aspirational Goals

Legality

Can be lawful **only** to remedy **actual discrimination**

Can be lawful **only** where there is a **manifest imbalance in traditionally segregated jobs**

Lawful (race/gender **cannot** play role in decisions)

Lawful (race/gender **cannot** play role in decisions)

Protecting Risk Assessments from Disclosure

- Relevant Protections
 - Attorney-Client Privilege
 - Work-Product Privilege
 - Self-Critical-Analysis Privilege

Europe

Europe

- North America
 - Centralized control
 - Quantitative goals
 - Management incentives
 - Greater emphasis on race than other regions

Europe

- Europe
 - Decentralized
 - Internal persuasion and lobbying (but some quotas)
 - Focus on gender, disability, and sexual orientation

UK Developments

- UK Corporate Governance Code 2012
 - A company's annual reports must include a description of the board policy on diversity, any measurable objectives, and progress on achieving the objectives
 - Evaluation of the board should consider the balance of skills, experience, independence, and knowledge of the company on the board; the board's diversity, including gender; how the board works together as a unit; and other factors relevant to the board's effectiveness
- Strategic Report, October 2013
 - Report of listed companies must include entries stating the number of persons of each sex who are directors, senior managers, and employees

Other UK Initiatives

- Women's Business Council
- Voluntary Gender Equality Reporting – aimed at private sector and voluntary organizations employing around 150 people or more
- Executive Search Firms Voluntary Code
- The 30% club
- Institute of Directors training courses for female directors and a directory of potential female directors
- March 2014 statistics – women accounted for 20.7% of FSTE 100 board positions, up from 17.3% in 2013 and 12.5% in 2011

EU Initiatives

- The European Commission produced a report in January 2013 that shows that the number of women on boards for publicly listed companies in Europe increased to 15.8% from 13.7% in January 2012
- 25% of the EU's largest companies have no women on their top-level boards
- In March 2011, the European Commission called on publicly listed EU companies to sign a pledge to increase the presence of women on corporate boards by 2015 and again by 2020
- In April 2014, European Parliament adopted a proposal for a directive requiring large listed companies to provide information on their diversity policies covering age, gender, geographical diversity, and educational and professional background

EU Initiatives

- In September 2012, the EU announced it would propose decisive legislative action on gender quotas for corporate boards, as the voluntary steps had failed
- In November 2012, a draft directive was published, which required:
 - 40% minimum of underrepresented gender for nonexecutive directors
 - Companies to make individual commitments relating to executive directors

Action Taken in Other Countries

- Use of a statutory quota system in Norway resulted in a 40% representation of women on boards
- Quota systems are also used in Belgium, France, Italy, Spain, and Portugal
- In Canada, Quebec has legislative gender parity for boards of crown corporations and has achieved 50% female representation
- Australia has been using a “report or explain” model

Japan

Japan

- Article 14 of the Constitution of Japan

“All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.”
- Based on the above concept, there are some laws regarding diversity:
 - Gender
 - Disability
 - Age

Japan

- Gender
 - Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment (“Equal Opportunity Act”) stipulates that an employer can take positive actions for women workers with the purpose of securing equal opportunity and treatment between men and women in employment (Article 8).
 - Examples from the leaflet of Ministry of Labor and Welfare:
 - *Internship program only for women students;*
 - *Encouraging only women employees to take a certification exam necessary for promotion; and*
 - *Promoting women employees in preference to men among employees who satisfy the criteria for promotion.*

Japan

- Disability

- Disabled Persons' Employment Promotion Act

- *An employer that hires 50 or more employees must hire one or more disabled persons as employees, which means that 2% (statutory ratio) of all employees must be disabled.*
 - *If an employer does not satisfy the statutory ratio, then the employer must make a payment of JPY50,000 (about USD500) per month per unsatisfied number of disabled employees to the governmental organization for disabled persons.*
 - *Small companies that have only 100 to 300 employees are imposed such penalty charge of JPY40,000 (about USD400) per month per unsatisfied number of disabled employees.*

Japan

- Disability
 - **Disabled Persons' Employment Promotion Act**
 - *However, the government does not levy such penalty charge on employers that hire only 200 or fewer employees.*
 - *After April 2015, this number (200 employees) will be reduced to 100. Therefore, only employers that hire 100 or fewer employees will be exempt from the obligation of the penalty charge.*
 - *The penalty money will be paid to employers that hire more than the statutory ratio (2%).*

Japan

- Age
 - A retirement system (usually at the age of 60) is legal in Japan, although an employer must rehire those employees up to the age of 65. When rehiring after retirement, an employer has wide discretion regarding terms and conditions of employment.
 - In terms of diversity, it is important to utilize elderly people after retirement since they have abundant experience, skills, and know-how.
 - Some companies try to keep elderly people by making a tempting offer.

Recent Global Issues

Recent Global Issues: Goals

Recent Global Issues: Boardroom Developments

Recent Global Issues: Data Collection/Privacy

Questions?



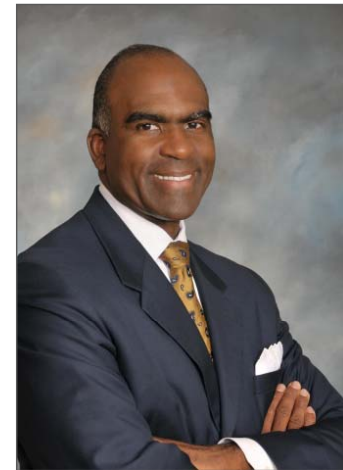
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