

Review of DEI Aspirations

Whereas: Since the June 2023 U.S. Supreme Court decision in *Students for Fair Admissions v. Harvard College*,¹ hundreds of higher education institutions have shuttered their diversity, equity and inclusion (DEI) programs and positions.²

Consequently, “there has been a sharp uptick in litigation challenging corporate DEI programs and initiatives, alleging that they require unlawful employment and contracting decisions to be made on the basis of race, in violation of Title VII of the Civil Rights Act of 1964...”³

Corporate compliance lawyers now advise clients that “DEI initiatives and programs that are not open to all applicants or those that apply an explicit race- or gender-based focus will likely face continued and heightened scrutiny.”⁴

Further, “companies, and their management teams and boards, should be prepared for increased employment-related litigation including litigation that seeks to hold executive officers and directors personally liable for purported breaches of their fiduciary duties in connection with the corporation’s DEI policies.”⁵

Many corporations dramatically reduced or eliminated their DEI programs,⁶ and companies face retribution for their discrimination. For example, Starbucks was the subject of a \$28.3 million judgment after a former worker claimed she was fired for being white.⁷

Supporting Statement: The Boeing Company’s (“Boeing” or “Company”) 2024 Sustainability and Social Impact Report “celebrates” the Company’s “progress” towards increasing the black representation rate in its U.S. workforce 20% by 2025, and to “close representation gaps for historically underrepresented groups” in its employee ranks by 2025.

Given Boeing’s recent high-profile aircraft malfunctions and failures – the Company’s quarterly net income dropped 24.75% in Q1 2024 and has not recovered,⁸ while its stock price has dropped from a 52-week high of \$267.54 to \$143.87 (as of market close on November 18, 2024)⁹ – should diversity in its workforce be a priority? Or should the Company instead be focused on the safety and quality of its aircraft?

¹ https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf

² <https://www.chronicle.com/article/tracking-higher-eds-dismantling-of-dei>

³ <https://www.wilmerhale.com/insights/client-alerts/20240627-corporate-dei-landscape-one-year-after-sffa>

⁴ <https://www.skadden.com/insights/publications/2023/12/2024-insights/esg/the-supreme-courts-affirmative-action-opinion>

⁵ <https://corpgov.law.harvard.edu/2024/02/14/how-boards-should-be-thinking-about-the-supreme-courts-sffa-affirmative-action-decision/>

⁶ <https://nypost.com/2024/09/03/us-news/how-robby-starbuck-is-prompting-brands-like-ford-to-ditch-dei/>

⁷ <https://www.cnn.com/2023/08/17/business/starbucks-payment-racial-discrimination-white/index.html>

⁸ <https://www.wsj.com/market-data/quotes/BA/financials/annual/income-statement>

⁹ <https://www.cnbc.com/quotes/BA>

Boeing claims it disbanded its DEI department and emphasized its commitment to “merit-based performance” and “equality of opportunity, not of outcomes.”¹⁰ This appears to be a PR ploy. All employees within its DEI department were merely transferred to a different department.^{11 12 13}

These discriminatory quotas leave Boeing ripe for regulatory, reputational and litigation risk.¹⁴ FTI Consulting advises there is a “heightened focus” on “litigation risk,” which “has transitioned from being merely an operational concern to becoming a strategic priority for the highest levels of corporate governance.”¹⁵

Resolved: Shareholders request the Company issue a report reviewing the Company’s DEI aspirations, detailing to shareholders the extent of its resources and personnel – across its divisions – devoted to these aspirations, and analyzing the risks that the Company’s DEI policies pose to shareholders, including legal liability and a reduced focus on merit.

¹⁰ <https://www.zerohedge.com/political/boeing-bails-diversity-division-reverts-merit-based-system>

¹¹ <https://nypost.com/2024/11/01/business/boeing-dismantles-dei-department-joining-companies-in-scrapping-controversial-policy/>

¹² <https://www.linkedin.com/in/zan-truluck/>

¹³ <https://www.linkedin.com/in/vivianesouza/>

¹⁴ <https://www.fticonsulting.com/insights/articles/de-risking-litigation-exposure-conflict-management-integral-business-administration>

¹⁵ <https://www.fticonsulting.com/insights/articles/de-risking-litigation-exposure-conflict-management-integral-business-administration>