

Revisit DEI Goals in Executive Pay Incentives

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

Corporations’ 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.” Also: “We also expect to see ongoing scrutiny of perceived hiring quotas and set-asides, particularly those that may appear to be incentivized by bonuses for management or company leadership.”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.⁷

SUPPORTING STATEMENT: The Compensation Committee of the Board of Directors for General Motors Company (“GM” or “Company”) incorporates “strategic goals” into named executive officers’ short-term incentive plan (“STIP”), which includes a points system that accounts for 25% of its “STIP Performance Measure.”⁸ Included in these goals are unquantified objectives like “...providing the best employee experience that supports and invests in [DEI],” and “prioritizing actions that are inclusive for the communities in which we live and work...”

Among its multitude of DEI initiatives, the Company has signed on to the “CEO Action for Diversity and Inclusion Pledge,” and has committed to standards established by LGBTQ advocacy group Human Rights Campaign (HRC).^{9 10} The former requires company leaders to force employees into “unconscious bias education” and for executives to devise “strategic action

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-robbey-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://investor.gm.com/static-files/7586678b-b420-43bc-8f27-eeecbee4c89f5>

⁹ https://www.gm.com/content/dam/company/docs/us/en/gmcom/company/GM_2023_SR.pdf

¹⁰ <https://www.hrc.org/resources/buyers-guide/general-motors-co.-4>

plans to prioritize and drive accountability around inclusion and diversity,”¹¹ while HRC demands that employee insurance plans provide controversial “transitioning” medical treatments for employees’ child dependents,¹² including puberty blockers, which are banned in the United Kingdom and whose prohibition is under consideration by the U.S. Supreme Court.¹³

These harmful, discriminatory programs leave GM ripe for regulatory, reputational and litigation risk. 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.”¹⁴

RESOLVED: Shareholders request the Board of Directors’ Compensation Committee to revisit its incentive guidelines for executive pay, to consider eliminating discriminatory DEI goals and aspirations from compensation formulas.

¹¹ <https://www.ceoaction.com/pledge/>

¹² <https://www.hrc.org/resources/corporate-equality-index-criteria>

¹³ <https://www.wsj.com/opinion/britain-bans-puberty-blockers-hormones-transgender-cass-report-u-s-v-skmetti-a0722877>

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