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| DEI PRACTICE UNDER SCRUTINY  **DEI PRACTICES UNDER SCRUTINY** | TITLE VII CONCERN (WHY IT MAY BE UNLAWFUL) |
| Hiring Quotas or “Workforce Balancing”  *e.g., reserving a set number of hires/promotions for a certain race or sex* | **Explicitly treating applicants differently based on race/sex is disparate treatment. Using quotas or attempting to “balance” the workforce by protected traits violates Title VII’s core ban on intentional discrimination.​**  [**justice.gov**](https://www.justice.gov/opa/pr/eeoc-and-justice-department-warn-against-unlawful-dei-related-discrimination#:~:text=%E2%80%9CFar%20too%20many%20employers%20defend,%E2%80%99%E2%80%9D)  [**hrdive.com**](https://www.hrdive.com/news/EEOC-anti-DEI-guidance-doj/743105/#:~:text=based%20on%20sex%20or%20race) |

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| “Diverse Slate” Requirements  *mandating certain demographics in candidate interview pools* | If implemented by including or excluding candidates because of their race, sex, etc., it constitutes intentional discrimination in recruitment​.  [seyfarth.com](https://www.seyfarth.com/news-insights/eeoc-issues-new-technical-assistance-on-dei-related-discrimination.html#:~:text=Diverse%20Interview%20Slates%3A%20The%20EEOC%E2%80%99s,groups%20in%20their%20interview%20pools)  Such policies may also require asking about or identifying candidates’ protected characteristics during hiring, which can be evidence of bias in the selection process​.  [seyfarth.com](https://www.seyfarth.com/news-insights/eeoc-issues-new-technical-assistance-on-dei-related-discrimination.html#:~:text=A%20footnote%20cautions%20that%20%E2%80%9Cdiverse,%E2%80%9D) |

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| Exclusive Affinity Groups/ERGs  *employee resource groups limited to members of one race/gender, etc.* | Closing membership based on protected status can unlawfully *“limit or segregate”* employees. Since these groups are often employer-supported, barring someone from joining due to their race/sex deprives them of networking or support opportunities at work, violating Title VII​.  [seyfarth.com](https://www.seyfarth.com/news-insights/eeoc-issues-new-technical-assistance-on-dei-related-discrimination.html#:~:text=Employee%20Resource%20Groups%20,employees%20based%20on%20protected%20characteristics)  [foleyhoag.com](https://foleyhoag.com/news-and-insights/publications/alerts-and-updates/2025/march/eeoc-and-doj-outline-employment-practices-that-constitute-illegal-dei-in-new-guidelines/#:~:text=,or%20other%20privileges%20of%20employment)  The guidance indicates affinity groups should be open to *all* employees (including allies) to avoid this concern. |

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| Identity-Restricted Training or Events  *separating employees by demographic for DEI training, workshops, or networking events* | Segregating workers by race, sex, etc. for any work program is unlawful, even if each group receives the same content​.  [foleyhoag.com](https://foleyhoag.com/news-and-insights/publications/alerts-and-updates/2025/march/eeoc-and-doj-outline-employment-practices-that-constitute-illegal-dei-in-new-guidelines/#:~:text=,guidance%2C%20it%20is%20unlawful%20to)  Title VII forbids “separating workers into groups” based on protected traits for trainings or other employment benefits​.  [seyfarth.com](https://www.seyfarth.com/news-insights/eeoc-issues-new-technical-assistance-on-dei-related-discrimination.html#:~:text=Segregated%20Training%20or%20Programming%3A%20Both,spaces%E2%80%9D%20or%20other%20separated%20programming)  Such separation can make employees feel excluded or classified by their identity, which is precisely what the law prohibits. |

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| Selective Mentoring/Sponsorship Programs  *mentorship, leadership development, or sponsorship opportunities only open to a certain demographic* | Denying access to career advancement opportunities on the basis of race, gender, or other protected traits is disparate treatment​.  [seyfarth.com](https://www.seyfarth.com/news-insights/eeoc-issues-new-technical-assistance-on-dei-related-discrimination.html#:~:text=Mentoring%20and%20Networking%20Programs%3A%20Both,that%20limit%20participation%20based%20on)  These programs affect employees’ advancement (a term or privilege of employment), so limiting them to one group means others are treated less favorably due to their protected status. The EEOC advises making mentoring and networking available to *“employees of all backgrounds.”*​  [seyfarth.com](https://www.seyfarth.com/news-insights/eeoc-issues-new-technical-assistance-on-dei-related-discrimination.html#:~:text=Mentoring%20and%20Networking%20Programs%3A%20Both,that%20limit%20participation%20based%20on) |

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| Diversity-Only Internship/Fellowship Programs  *hiring interns or fellows from only one protected group* | If membership or selection is restricted by protected trait, it unlawfully shuts out other applicants because of who they are.​  [ogletree.com](https://ogletree.com/insights-resources/blog-posts/eeoc-answers-questions-about-what-constitutes-illegal-dei-programs/#:~:text=,exclusion%20from%20a%20candidate%20pool)  While outreach can target underrepresented communities, the selection criteria cannot *require* a specific race, sex, etc. without violating Title VII. All applicants must have equal opportunity to be considered. |

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| Employment Actions to Satisfy Customer Preferences  *e.g., assigning or not assigning staff to projects because a client requests a certain race/gender* | Basing employment decisions on client or customer preference for a protected class is illegal. The guidance flatly states that an employer cannot justify discrimination *“because the employer’s clients or customers prefer”* a certain demographic​  [theemployerreport.com](https://www.theemployerreport.com/2025/03/eeoc-and-doj-issue-joint-guidance-on-dei-related-discrimination/#:~:text=It%20further%20provides%20that%20employers,discrimination%20on%20the%20basis%20of)  Title VII allows no exception for catering to third-party biases. |

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| DEI Training Content or Exercises (that *might demean or stereotype*) | Training that target or belittles employees due to their race, sex, etc. could create a *hostile work environment*. If DEI content is “discriminatory in content or context” (for example, singling out one group as oppressors or requiring one gender to listen silently), it may be viewed as harassment based on a protected trait​ [morganlewis.com](https://www.morganlewis.com/pubs/2025/03/eeoc-and-doj-issue-guidance-on-discrimination-related-to-dei-under-title-vii#:~:text=,%E2%80%9D).  Employers should vet DEI content to ensure respect and inclusivity for all employees. |

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| Retaliation for DEI-Related Complaints  *punishing an employee for questioning a DEI policy or training* | Retaliating against employees who object to potential discrimination is unlawful​. [morganlewis.com](https://www.morganlewis.com/pubs/2025/03/eeoc-and-doj-issue-guidance-on-discrimination-related-to-dei-under-title-vii#:~:text=,%E2%80%9D)  If an employee reasonably believes a DEI program violates Title VII (and voices that concern or refuses participation), that is protected activity. Disciplining or terminating someone for such opposition could trigger a retaliation claim under Title VII​. [morganlewis.com](https://www.morganlewis.com/pubs/2025/03/eeoc-and-doj-issue-guidance-on-discrimination-related-to-dei-under-title-vii#:~:text=,%E2%80%9D) |