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Uncovering Employee Covering: Addressing Authenticity in Your DEI Program

**Annual Employment Law Update Part 4
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Outline

- Covering in the Workplace
- The Role of Implicit Bias in Diversity and Inclusion Programs
 - Referral Bonuses
- Creating Successful Diversity and Inclusion Programs that don't run afoul of the law
 - Voluntary Affirmative Action Programs
 - Rooney Rule/Mansfield Rule

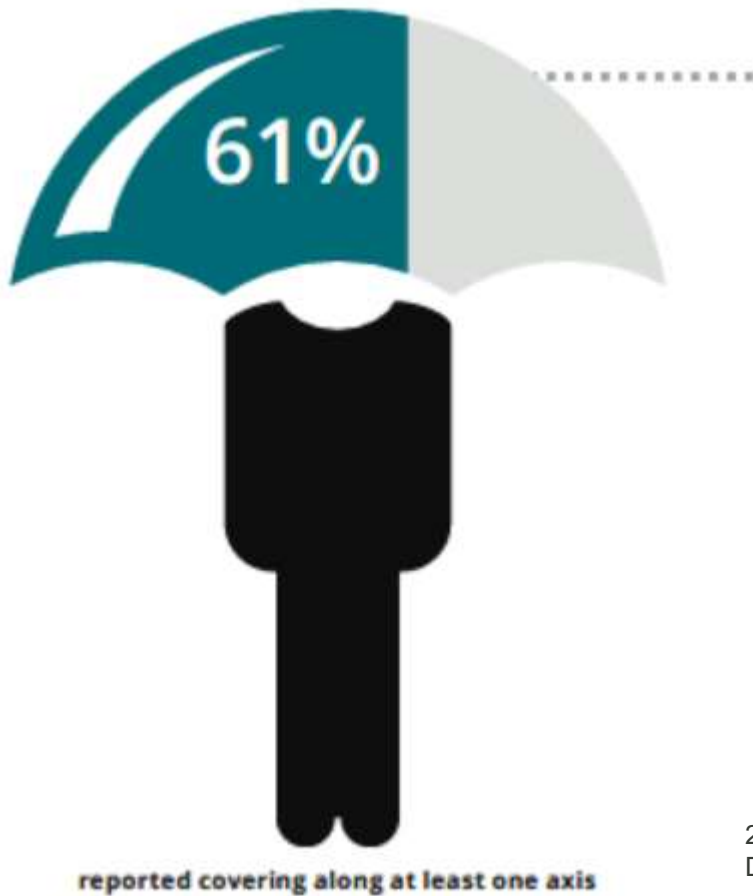
Covering

- What is Covering
- What Role Does it Play in Diversity & Inclusion Programs?

What is Covering?

- Attempts to minimize personality characteristics or attributes based on societal stigmas
- Examples of famous covering:
 - FDR – Covering disability
 - Margaret Thatcher – Voice coach covering class issues

Why is it important?



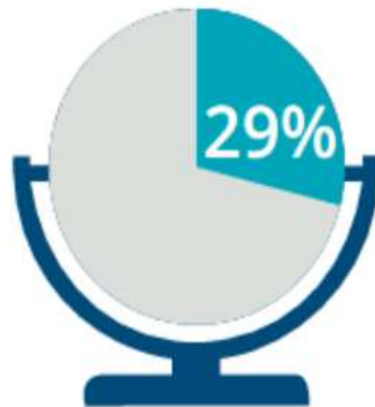
- Appearance Covering
 - Older men dying hair
- Affiliation Covering
 - Political affiliation
 - Motherhood penalty
- Advocacy Covering
 - BLM
- Associational Covering
 - Not joining affinity groups

2019 study. 3,129 respondents at different levels within their organization. Source: Deloitte, *Uncovering talent: A new model of inclusion*.

Appearance Based Covering



Appearance-based covering



of respondents said they engaged in appearance-based covering



of those who covered believed appearance-based covering was "somewhat" to "extremely" important to their long-term professional advancement

Source: Deloitte, *Uncovering talent: A new model of inclusion.*

Race/ethnicity (Asian)	"I try to stay away from work that is stereotypical of Asian[s] (e.g., math)."
Gender (female)	"I was coached to not mention family commitments (including daycare pickup, for which I leave half an hour early, but check in remotely at night) in conversations with executive management, because the individual frowns on flexible work arrangements."
Sexual orientation	"[I have] no pictures of my partner in the office, [and leave] off personal pronouns in discussion."
Age (younger)	"I am hesitant about taking time off during the day to attend doctors' appointments or taking extended PTO. I feel that being a younger practitioner, I have not earned that type of flexibility."
Age (older)	"I am worried that my age will block me from promotion since I am older than many people in my position so I have been careful not to mention my age or anything that might date me."
Socioeconomic background	"I didn't always volunteer the information that I grew up very poor and that I was the first to go to college. It seemed like I wouldn't be accepted because I always assumed everyone I worked with grew up middle or upper class."

Advocacy Covering

- What type of behavior would this include?

Race/ethnicity (Asian)	"Even though I am of Chinese descent, I would never correct people if they make jokes or comments about Asian stereotypes."
Gender	"I try not to make gender an issue at all. I never suggest it is an issue and do not bring up gender bias as a factor when considering applicants, etc., even if it might be present."
Sexual orientation	"I didn't feel I could protest when the person put in charge of diversity for our group was in fact an extremely vocal homophobe."
Citizenship	"Having a green card and not being a full citizen, I do not like to speak about anything political. The risk of hearing 'if you don't like it here, just leave' is always a fear."
Disability	"I would very much like to be an advocate for disability inclusion and improvements ... but I have been reluctant to, because I'm afraid it will have [a] negative impact on my career."
Political affiliation	"It is difficult during an election year to not offend anyone who may be a Republican or a Democrat. And as such, you tend to downplay your own beliefs."

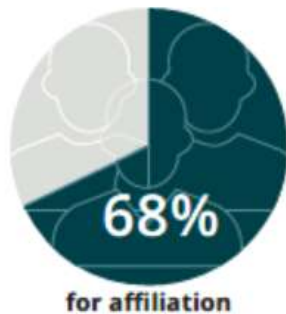
Associational Covering

- 29% of respondents admitted to associational covering and 79% of that group stated they believed the covering was somewhat to extremely important to their long-term professional advancement
- Gender & Sexual Orientation
 - Women who are afraid to sponsor other women because they are afraid to be seen as someone who will only sponsor women.
 - Employees who refuse to bring a plus one to work events or are afraid as of being labeled as only mentoring LGBTQ individuals
- Mental/Physical Health
 - Individuals with depression who support others with depression but won't do it publically
 - Not associating with cancer groups so as not to draw attention to medical status/disability
 - Alcoholism, and not joining others after work because they are ribbed for not ordering an alcoholic beverage

Role in Diversity and Inclusion?



The percentage of respondents who said that covering along an axis was "somewhat" to "extremely" detrimental to their sense of self was as follows:



Implicit Bias

- Types of Implicit Bias
- Bias Communicated Through Words and Symbols
- Combatting Implicit Bias

1. Anchoring bias.

People are **over-reliant** on the first piece of information they hear. In a salary negotiation, whoever makes the first offer establishes a range of reasonable possibilities in each person's mind.



2. Availability heuristic.

People **overestimate the importance** of information that is available to them. A person might argue that smoking is not unhealthy because they know someone who lived to 100 and smoked three packs a day.



3. Bandwagon effect.

The probability of one person adopting a belief increases based on the number of people who hold that belief. This is a powerful form of **groupthink** and is reason why meetings are often unproductive.



4. Blind-spot bias.

Failing to recognize your own cognitive biases is a bias in itself. People notice cognitive and motivational biases much more in others than in themselves.



5. Choice-supportive bias.

When you choose something, you tend to feel positive about it, even if that **choice has flaws**. Like how you think your dog is awesome – even if it bites people every once in a while.



6. Clustering illusion.

This is the tendency to **see patterns in random events**. It is key to various gambling fallacies, like the idea that red is more or less likely to turn up on a roulette table after a string of reds.



7. Confirmation bias.

We tend to listen only to information that confirms our **preconceptions** – one of the many reasons it's so hard to have an intelligent conversation about climate change.



8. Conservatism bias.

Where people favor prior evidence **over new evidence** or information that has emerged. People were **slow to accept** that the Earth was round because they maintained their earlier understanding that the planet was flat.



9. Information bias.

The tendency to **seek information when it does not affect action**. More information is not always better. With less information, people can often make more accurate predictions.



10. Ostrich effect.

The decision to **ignore dangerous or negative information** by "burying" one's head in the sand, like an ostrich. Research suggests that investors check the value of their holdings significantly less often during bad markets.



SOURCES: Brain Biases; Ethics Unwrapped; Explorable; Harvard Magazine; HowStuffWorks; LearnVest; Outcome bias in decision evaluation, Journal of Personality and Social Psychology; Psychology Today; The Bias Blind Spot: Perceptions of Bias in Self Versus Others, Personality and Social Psychology Bulletin; The Cognitive Effects of Mass Communication, Theory and Research in Mass Communications; The less-is-more effect: Predictions and tests, Judgment and Decision Making, The New York Times; The Wall Street Journal; Wikipedia; You Are Not So Smart; ZhurnalyWiki

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11. Outcome bias.

Judging a decision based on the **outcome** — rather than how exactly the decision was made in the moment. Just because you won a lot in Vegas doesn't mean gambling your money was a smart decision.



12. Overconfidence.

Some of us are **too confident about our abilities**, and this causes us to take greater risks in our daily lives. Experts are more prone to this bias than laypeople, since they are more convinced that they are right.



13. Placebo effect.

When **simply believing** that something will have a certain effect on you causes it to have that effect. In medicine, people given fake pills often experience the same physiological effects as people given the real thing.



14. Pro-innovation bias.

When a proponent of an innovation tends to **overvalue its usefulness** and undervalue its limitations. Sound familiar, Silicon Valley?



15. Recency.

The tendency to weigh the **latest information** more heavily than older data. Investors often think the market will always look the way it looks today and make unwise decisions.



16. Salience.

Our tendency to focus on the **most easily recognizable features** of a person or concept. When you think about dying, you might worry about being mauled by a lion, as opposed to what is statistically more likely, like dying in a car accident.



17. Selective perception.

Allowing our expectations to **influence how we perceive** the world. An experiment involving a football game between students from two universities showed that one team saw the opposing team commit more infractions.



18. Stereotyping.

Expecting a group or person to have certain qualities without having real information about the person. It allows us to quickly identify strangers as friends or enemies, but people tend to **overuse and abuse** it.



19. Survivorship bias.

An error that comes from focusing only on surviving examples, causing us to **misjudge a situation**. For instance, we might think that being an entrepreneur is easy because we haven't heard of all those who failed.



20. Zero-risk bias.

Sociologists have found that **we love certainty** — even if it's counterproductive. Eliminating risk entirely means there is no chance of harm being caused.



SOURCES: Brain Biases; Ethics Unwrapped; Explorable; Harvard Magazine; HowStuffWorks; LearnVest; Outcome bias in decision evaluation, Journal of Personality and Social Psychology; Psychology Today; The Bias Blind Spot: Perceptions of Bias in Self Versus Others, Personality and Social Psychology Bulletin; The Cognitive Effects of Mass Communication, Theory and Research in Mass Communications; The less-is-more effect: Predictions and tests, Judgment and Decision Making; The New York Times; The Wall Street Journal; Wikipedia; You Are Not So Smart; ZhurnalWiki

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Individual vs. Systemic Bias

- Individual bias
 - Specific to each person
 - Explicit or implicit
- Systemic bias
 - “Institutional” bias
 - Policies, practices, procedures of the workplace

Do Referral Bonuses Adversely Impact D&I?

- Are we bonusing people who are referring people who are similar in beliefs, interests, and demographics as the employee?
- Are we using an anchoring bias in believing the individual will be an asset to the organization?
- Is there a halo bias?
- Is there a framing bias?

Creating Successful Diversity and Inclusion Programs

- Interrelationship between Diversity and Inclusion
- Why Programs Fail
- How We Can Succeed

Diversity and Inclusion are Interrelated

- Inclusion doesn't occur unless you have a diverse pool of applicants for positions; it starts even before applications are reviewed:
 - Where are we recruiting from?
 - What types of benefits do we use to entice applicants?
 - How are we supporting efforts for diversity and inclusion in the community?
- Hiring
 - Delete “not a good culture fit” from vocabulary
- Retaining talent
 - How do we keep diverse employees?
 - “It's not us, it's them” standpoint

Combatting Bias

- Education
- Awareness
 - Interviewing
 - Hiring
 - Promotions
 - Discipline
 - Termination
- Accountability
- Third-party intervention training

Words and Phrases that Have a History:

- Peanut Gallery
 - Vaudeville-era theaters, worst seats in the house for people of color
- Spaz
 - Relates to disabilities and associated with cerebral palsy
- Hooligans
 - 19th Century cartoon regarding Irish immigrants
- “No Can Do”
 - Mocking Chinese Pidgin English
- “Rule of Thumb”
 - 1600 law allowing men to assault their wife with a stick

Other Phrases to be Mindful of

- No offense, but. . .
- Don't be such a prude
- That was a ballsy move
- Wearing the pants
- Don't worry your pretty little head
- It's not a big deal
- Someone is whipped
- Why do all (men/women) . . .
- Grow a pair
- Boys will be boys
- It was just a joke
- Smile
- Working mom (versus working parent)
- When will you take time to start a family?
- For a woman/man you are a great . . .
- Office mom
- It's time to man up
- Are you sure you can handle this?
- "Debbie Downer" or "Negative Nancy"

Voluntary Affirmative Action Plan

1. The plan is remedial in nature, in that there has been past discrimination or possible adverse impact as to the group in question.
2. The plan does not unnecessarily interfere with the interest of non-minority employees, such as by terminating those employees to replace them with diverse employees.
3. The plan or program is temporary in nature with the goal of achieving some type of balance without maintenance.

Rooney Rule

- Background
- Interviewing versus hiring
- Channels of recruitment
- Diversity of hiring team

Measuring Failure and Success

Points of Failure

- Lack of measurable goals:
Permissible under AAP and if looking to rectify for a period of time
- Communication to current employees “diversity hire”
- Environment – physical and cultural

Achieving Success

- Plan of action to increase diversity of candidates
- Accountability if goals are not met
- Training on best practices and D&I topics

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Values. Value. Valued.

Thank You!

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