

Exploring the Landscape for Belonging & Inclusion Programs: Employment Law Perspectives and Context

PRESENTED BY

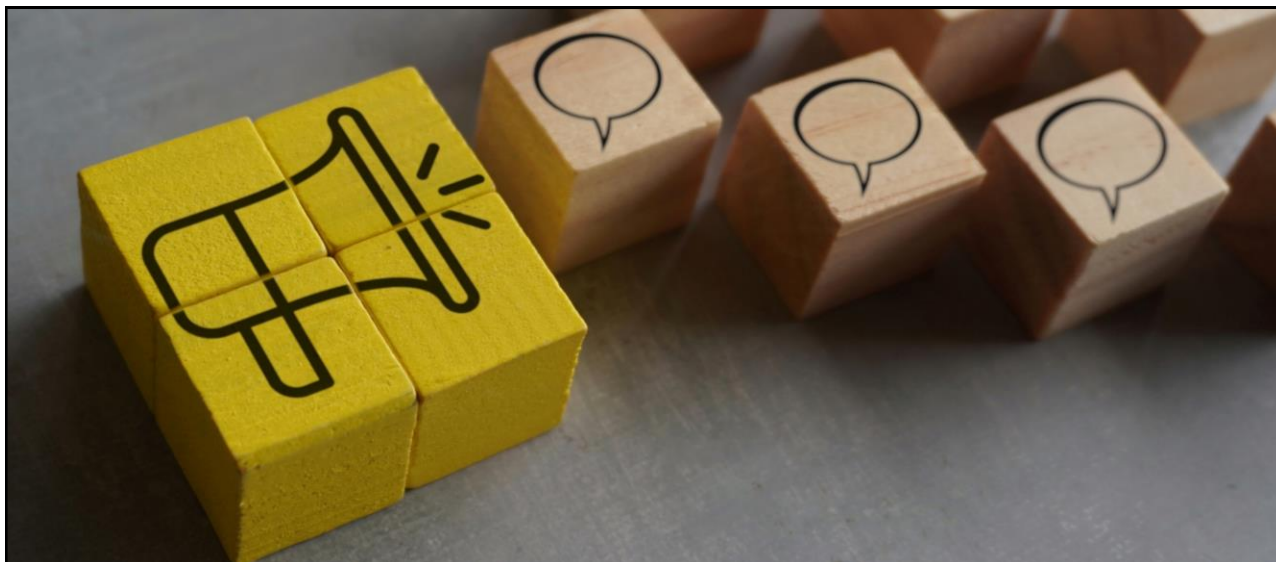
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FOR

Association of Washington Cities
Annual Conference – June, 2025

June 22, 2025

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Framing the Conversation

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The More Things
Change, the
More
They Stay the
Same

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Reserved.

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DEI in 2025: What Has Changed

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DEI in 2025: Executive Orders Focused on DEI

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Executive Order: Ending Radical and Wasteful Government DEI Programs and Preferencing

- Rescinded Biden-era pro-DEI orders
- Ordered all federal agencies to end any form of DEI programming and shutter DEI departments
- Ordered termination of all “equity-related” grants and contracts

Status: Legal challenges pending; 4th Circuit allowed enforcement to proceed

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DEI in 2025: What Has Changed

- Executive Orders focused on DEI
- Dramatic change in Federal position and approach regarding DEI
- Scrutiny on DEI programs and programming
- Claims of discrimination and “reverse discrimination” subject to the same legal standard under federal law

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The More Things Change, the More
They Stay the Same

Executive Order 14173: Focused on DEI – E.O.

- Status -- Where you stand depends on where you are:
- *Nat'l Assoc. Diversity Officers v. Trump*, preliminary injunction granted but Fourth Circuit stayed injunction pending appeal.
 - WD WA – preliminary injunction granted, appeal pending, *King County et al. v. HUD, DOT et al.* – Scope limited to parties' grants.
- Practical guidance – stay tuned for legal developments.

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The More Things Change, the More
They Stay the Same

WA Employment Law

- WA legislative updates to Equal Pay & Opportunity Act, PFMLA, and Fair Chance Act
- State of WA administrative and enforcement priorities

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DEI in 2025: What Has Not Changed

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DEI in 2025: What Has Not Changed

- The law – Federal (Title VII) and State (WLAD) still prohibit employment discrimination
- If you had a DEI program before January 20, 2025, that complied with Federal and State law, it still does
 - Be sure the program does not use race, sex or any other protected class as a consideration in employment decisions

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DEI in 2025: What Has Not Changed

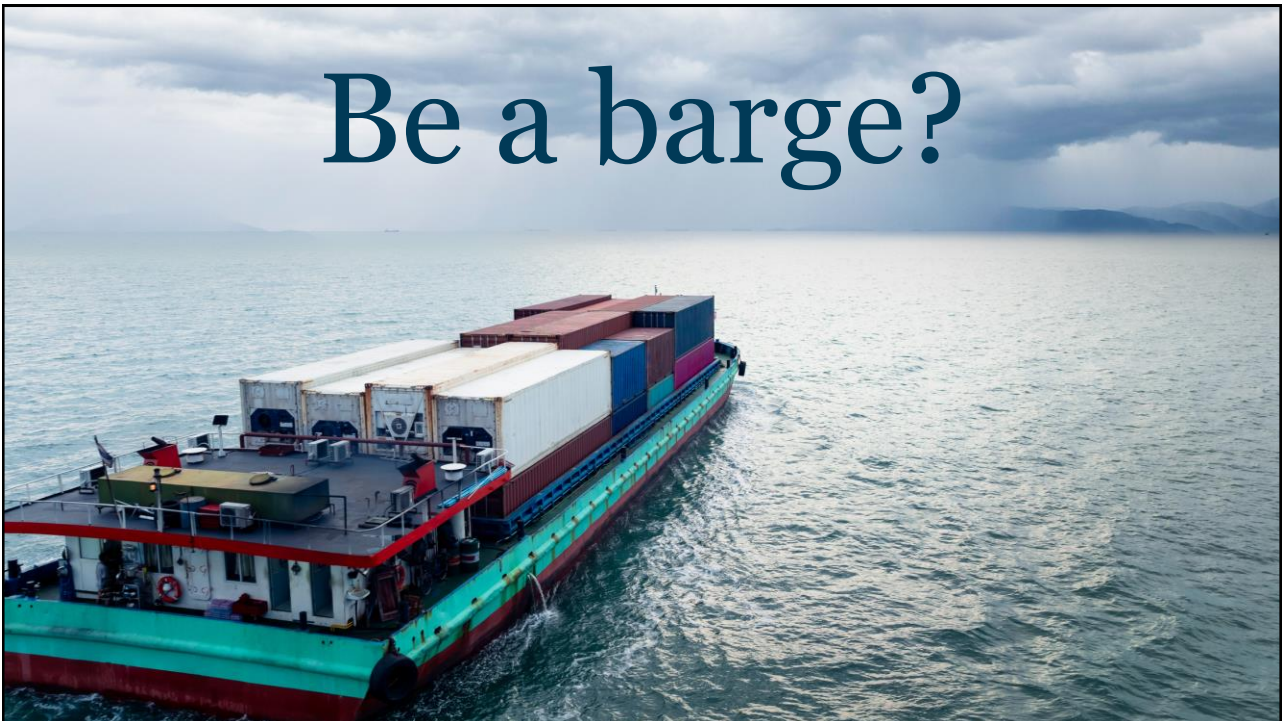
- Well-designed DEI programs do not violate the law
- State of Washington's anti-discrimination laws, enforcement priorities remain
- Plaintiff's employment attorneys looking for opportunities

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DEI in 2025: What Now?

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Or Speedboat?



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DEI in 2025: What Now?



Review all policies and programs to ensure legal compliance



Treat all employees with dignity and respect



Training is more important than ever



Carefully review any certifications required for federal funds

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Opportunities and Pitfalls:

- Grant certifications
- Recruitment and hiring
- Trainings
- Flag, bulletin boards and other speech-related policies
- Community celebrations
- Affinity groups and other employee programs

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Opportunities and Pitfalls: Grant Certifications

- Certification requirements included in plethora of transportation-related grants: FTA, FHWA, and FAA, among others
- Certifications include applicant's agreement:
 - that "compliance with all applicable federal anti-discrimination laws is material to the government's payment decisions for purposes of the False Claims Act [31 U.S.C. § 3729(b)(4)]". Aimed at making it difficult for recipients to defend against DEI-related False Claims Act litigation;
 - that "it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives *that violate any applicable Federal anti-discrimination laws*";
 - that it will "cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law"
- To what conditions can / should your city agree?

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Opportunities and Potential Pitfalls: Recruitment and Hiring

- Broad, inclusive recruitment outreach
- Employment decisions (hiring, promotion) must avoid use of race, sex or any other protected class as a consideration in employment decisions
 - Limited exception for voluntary programs to remedy a local government's own past discriminatory actions, or for voluntary programs to address "conspicuous . . . imbalance in traditionally segregated job categories" in absence of employer's own discriminatory practices. BUT: carefully consider with legal counsel.
 - Protected categories remain broader under WA law (WLAD) than federal law
 - Reverse discrimination claims now subject to same legal standard as discrimination claims.
- Utilize training prior to and during recruitment and hiring processes.

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Hypothetical: Sam & The City's Shifting Priorities

- Sam, a Strategic Advisor, includes she/her pronouns in her email and displays a Pride flag at her workstation
- She answers coworkers' questions about her LGBTQ identity and support for gender-diverse communities.
- Sam is asked to help revise Housing Authority materials based on new federal priorities, including:
 - Consulting legal on repealing anti-discrimination policies
 - Removing Juneteenth as a holiday
 - Taking down "All Gender" restroom signs
 - Scrubbing "DEI" terms from public materials

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Hypothetical: Sam & A City's Shifting Priorities

- Sam is also asked to participate on a hiring panel for a new City Manager.
- During the post-interview discussion, stakeholders express concern:
 - One objects to a finalist's use of they/them pronouns
 - Another worries that selecting a person of color will seem like a "DEI hire"
- Sam becomes upset and leaves the meeting.
- Afterward, a senior staff member, Sally, complains to leadership:
 - Upset about Sam's reaction in the meeting
 - Discomfort with Sam's Pride flag and pronouns
 - Says it is unfair that she (Sally) cannot display religious symbols (like a picture of Jesus)

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Training

- Training on state and federal anti-discrimination laws and regulations strongly recommended, often mandatory.
- Training on belonging, equity and inclusion policies also appropriate
- Consider tone and content
- Consider workforce implications to changes in training or policy emphasis
- Handling complaints

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Flagpoles, Bulletin Boards and Holiday Displays

- Government speech or limited public forum?
- If limited public forum, are any criteria viewpoint neutral?
- Who decides on a proposed display?
- What if there are vocal objections?



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Community Celebrations

- Consider recognized federal and state holidays
- Consider extent of city's role in event: Sponsor? Participant?
- Equal opportunity for participation?
- Language or other accommodations?

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Employee programs

- Employee affinity groups and other programs remain appropriate
- Participation voluntary
- Equal opportunity for participation

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Washington Legislative Updates

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Amendments to Equal Pay & Opportunities Act

Effective July 27, 2025

- Old news – effective July 1, 2025 – expanded to cover all protected classes, not just gender
- New legislation – for 2 years; until July 2027 – 5 business day cure period after receiving notice of defective posting
- May advertise single fixed pay amount instead of pay range
- Limits remedies for affected job applicants
- Exempts job postings that are “digitally replicated and published without an employer’s consent”

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Amendments to WA PFMLA Act

Maybe effective January 1, 2026

- **Only take effect if funded in appropriations act by June 30, 2025**
- Significant changes
 - Expansion of job protection – eliminates hours of work requirements; reduces length of service to 180 calendar days; applies to smaller employers (2026 – 25 or more; 2027 – 15 or more)
 - Address stacking of job-protected leave
 - Employees must affirmatively exercise right to job reinstatement
 - More employer notice requirements
 - Reduced claim duration – 4 hours vs current 8 hours
 - Expanded benefits continuation

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Amendments to Fair Chance Act

Effective July 1, 2026

- More prohibitions
 - May not inquire about criminal records before extending conditional job offer
 - May not take adverse employment action based on applicant's arrest record or juvenile conviction record
 - May not take adverse employment action based on adult conviction record unless employer has a legitimate business reason for taking action
- Additional obligations on employers
 - Pre-adverse action notice
 - Adverse action notice after action with written decision
- Increased penalties

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Questions?

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Thank you.



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