

DEI PRACTICE TEAM



McGuireWoods helps clients navigate the onslaught of legal questions, risks and challenges regarding their DEI programs.

The U.S. Supreme Court's decision in *Students for Fair Admissions (SFFA) v. President and Fellows of Harvard College* and *SFFA v. University of North Carolina, et al.* — as well as changes in state laws and heightened plaintiff group activity — have sparked increased legal, shareholder and other scrutiny of corporate diversity, equity and inclusion (DEI) programs. McGuireWoods has established a DEI practice team to help clients identify, navigate and mitigate potential legal issues arising from these and other developments.

On its face, the *SFFA* decision does not directly concern employment, as the Supreme Court's prior rulings endorsing the limited use of race in pursuing the educational benefits of diversity were a special exception for college admissions that never applied to public and private employers. The high court, however, notably references and relies expressly on case law concerning Title VII and set-asides in government contracts for minority-owned businesses to reach its decision. And the decision's holding and language have broader implications for corporate hiring practices, affirmative action and other DEI initiatives. Indeed, multifaceted efforts already are underway to push aspects of the Supreme Court's ruling beyond higher education.

In light of these developments, now is the time for organizations to assess their DEI programs carefully; understand the aspects of those programs that are most vulnerable to litigation, enforcement actions, government audits / reviews (including congressional investigations) or shareholder demands; and take steps to defend against legal challenges. The outcome of the 2024 U.S. presidential and congressional elections may impact organizations' actions in this realm as well and provide greater clarity with respect to potential investigations and enforcement actions.

HOW WE HELP

The multidisciplinary team comprises lawyers from the firm's [labor and employment](#), [education](#), [affirmative action](#), [government contracting](#), [appeals and issues](#), [corporate governance](#), [commercial litigation](#), [insurance recovery](#), and [government investigations and white collar litigation](#) groups. Our lawyers help clients develop strategies to minimize risk and meet legal and regulatory requirements while continuing to promote a diverse and inclusive workplace. When programs or processes that impact an organization's DEI objectives are challenged, McGuireWoods will defend any private litigation or government enforcement action initiated.

The team collaborates across practice areas and industry teams to develop practical advice so organizations can accomplish their DEI objectives in a lawful manner despite an ever-changing legal landscape. When the programs or processes that impact an organization's DEI objectives are challenged, McGuireWoods stands ready to defend any private litigation or government enforcement action initiated.

The team's leadership includes a former in-house counsel at a major U.S. corporation, a former DEI leader and affirmative action officer, a former U.S. Department of Education official and university in-house counsel, a former deputy director at OFCCP, former U.S. Supreme Court clerks, and accomplished lawyers experienced in litigation, investigations and strategic counseling.

The team advises clients on:

- Defenses to traditional employment law claims concerning DEI programs under Titles VI and VII of the Civil Rights Act and 42 U.S.C. § 1981.
- Defenses to and advice regarding shareholder proposals / proxy votes, derivative claims, and other business and securities matters related to DEI programs.
- Strategies for federal government contractors to comply with Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act and the Rehabilitation Act, create acceptable affirmative action plans, and defend against enforcement actions by the U.S. Department of

Labor's Office of Federal Contractor Compliance Programs.

- Strategies for state attorney general and congressional investigations related to corporate DEI programs.
- Maximizing insurance recoveries for investigations and lawsuits challenging corporate hiring practices, affirmative action and other DEI initiatives.
- Potential mitigation measures such as attorney-client privileged DEI audits to assess risk and insurance coverage review. Such audits would include:
 - how DEI and diversity are defined;
 - employment policies;
 - talent acquisition and promotion procedures / practices;
 - targeted internships, scholarships and grants;
 - aspirational goal-setting and reporting;
 - employee resource group implementation;
 - internal and public-facing statements by HR decision-makers and corporate officers;
 - environmental, social and governance statements and reports;
 - diverse vendor programs and contracting practices;
 - insurance policies and coverage;
 - online DEI commitments and disclosures; and
 - membership in associations with specific diversity commitments.

At McGuireWoods, DEI is a core value and the firm understands and supports the importance of a diverse and inclusive workplace. From tailored policies to comprehensive privileged audits, we empower clients to lawfully tailor and create an environment where every voice is heard and respected, fostering inclusion, innovation and growth. Contact a team member below to learn more about how the DEI practice team can assist.



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ABOUT MCGUIREWOODS' LABOR & EMPLOYMENT DEPARTMENT

Our more than 60 **labor and employment lawyers** across the United States and Europe represent local, national and multinational employers — from small businesses to governmental entities and nonprofits to Fortune 500 companies. McGuireWoods counsels employers in every aspect of the employer / employee relationship, including federal, state and international law compliance; traditional labor issues; internal investigations; and executive compensation. Our experience crosses key areas of employment law, including wage and hour class and collective actions; large portfolios ranging from single-plaintiff statutory claims to systemic class actions across the country; traditional labor work; and OFCCP audits and counseling. McGuireWoods' L&E practice and lawyers have earned numerous honors, including recognition in prestigious publications such as Chambers USA and Legal 500 United State.

ABOUT MCGUIREWOODS' GOVERNMENT INVESTIGATIONS & WHITE COLLAR LITIGATION DEPARTMENT

Fortune 100 companies and high-profile individuals worldwide call on McGuireWoods' nationally recognized **Government Investigations & White Collar Litigation Department** to handle some of their most notable and complex matters. The team of more than 80 attorneys represents clients across industries in civil, criminal and congressional investigations and enforcement matters at the federal and state levels. The Government Investigations & White Collar Litigation Department is recognized as an elite practice, honored by Chambers USA with a highly regarded nationwide ranking for Corporate Crime & Investigations, honored twice as a *Law360* White Collar Practice Group of the Year, and consistently ranked among the world's leading investigations firms on the *Global Investigations Review* 100 guide to top cross-border investigations practices. The Legal 500 United States, a premier list of the country's best law firms, also commended McGuireWoods for the "exceptional quality" of its powerhouse white collar litigation practice.

ABOUT MCGUIREWOODS' COMMERCIAL LITIGATION DEPARTMENT

At more than 200 lawyers strong — many of them first-chair trial attorneys — our **commercial litigation team** has the bench strength to litigate and defend clients' interests in courtrooms and tribunals around the world. We bring innovation and a business-minded focus to providing cost-effective, efficient solutions that further clients' goals. The team represents the full range of business clients — from emerging companies, to nonprofit organizations, to multinational Fortune 100 corporations — operating in virtually every sector of the global economy. Our litigation prowess has earned McGuireWoods significant industry recognition, with publications such as Chambers USA and Legal 500 UK noting our practice and individual lawyers among the top practitioners.

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