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Diversity in the Workplace in the Era of Trump—Corporate America v. America First?

Diversity

In the last 25 plus years, it appeared that America had reached something of a consensus about the value of diversity and inclusion in our society, particularly in the workplace. Indeed, it is now unusual to find a large corporation or professional services firm that does NOT have a formal diversity and inclusion program, generally headed by a C-suite level executive. In this *Bloomberg Law* Insights article, Susan Brooks, Principal with T. H. Easter Consulting, discusses whether the election of Donald Trump as President of the United States means that it may be time to reassess this “consensus.” Now that Trump is the president, among other things, where does this leave efforts toward inclusion in our society, and more specifically, in the American workplace?

BY SUSAN BROOKS

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The federal government has addressed issues of bias, whether conscious or unconscious, through laws and regulations promulgated by all three branches. These efforts were not just a response to discrimination in isolation; they were also an overt nod to the idea that inclusion is integral to improving socioeconomic conditions for diverse populations.

Although there always have been dissenting voices who insist that we are now a color-blind society, negating the need for assertive government action, the plethora of statistics that demonstrate the lag between the progress of the white majority and minority populations in terms of wealth, compensation, professional achievement and education, among other things, is difficult to ignore. In what has become a global crisis of income inequality, appreciation of difference and efforts toward inclusion have been seen as integral to providing broader economic opportunity for all.

What Impact Does Election Have on Inclusion? The election of Donald Trump suggests that it may be time to reassess this “consensus.” Trump’s message was two-fold, and “Make America Great Again” was merely the

predicate. The necessary mindset for this, he suggested, was “America First.” What does this mean? And now that he is the president, what are the implications of the seeming success of this message? And finally, where does this leave efforts toward inclusion in our society, and more specifically, in the American workplace?

It has been only three months since Trump’s inauguration as the 45th President of the United States, yet the flurry of activity that has accompanied his young administration warrants taking a step back to see whether and where that activity has translated into concrete policy. Nothing is more central to those policies than the American workplace. Campaign promises to bring jobs back were central to Trump’s appeal, so scrutiny of those efforts and their impact are in order.

Initial reports suggested the private sector would continue its inclusion efforts, notwithstanding the election result and its potential legal and regulatory implications.

In a *Bloomberg* article from Nov. 11, 2016, just a week after the election, corporate leaders were steadfast. “Jeffrey Immelt affirmed GE’s commitment to ‘people of all races, genders and sexual orientations’ in an internal blog post Wednesday musing on the election. That echoed Apple CEO Tim Cook’s message to workers that the tech giant welcomes everyone, ‘regardless of what they look like, where they come from, how they worship or who they love.’ Oscar Munoz of United Continental Holdings Inc. said in a message to employees that they represent ‘every creed and conviction, background and belief.’ ” (*Companies Grapple With Diversity Questions After U.S. Election*, <https://www.bloomberg.com/news/articles/2016-11-11/from-immelt-to-cook-fresh-pledges-for-diversity-in-trump-era>)

And this response made perfect business sense. These leaders for years had recognized and embraced the demographic evolution the U.S. is experiencing, and its implications both for their workforces and their customers. When it comes to the bottom line, these leaders endorsed the idea that it makes business sense to stand on the side of diversity and inclusion.

But the new administration is not only giving voice to a portion of America that is less interested in diversity and inclusion, it is putting the power of the federal government behind the sentiment. The president’s rhetoric alone seems to indicate that “America First” means the exclusion of some immigrant populations. Such an approach seems destined to have a disproportionate impact on specific industries, including technology, medicine, engineering and agriculture.

He has attempted twice to translate this rhetoric into policy via executive orders limiting visas from some predominantly Muslim countries. He also has included provisions in his proposed budget for the wall he wishes to erect to block migrants from crossing the Southern border.

Immigrant and Customs Enforcement (ICE) has begun taking undocumented immigrants into custody when they access any government services. They have gone so far as to arrest a woman who was appearing in court to get a restraining order against her abusive partner. And, according to an April 5, 2017, *Fox News* report, DHS will not rule out arresting undocumented immigrant victims of, or witnesses to, crimes <http://www.foxnews.com/politics/2017/04/05/dhs-wont-rule->

[out-arresting-illegal-immigrant-crime-victims-witnesses.html](http://www.foxnews.com/politics/2017/04/05/dhs-wont-rule-out-arresting-illegal-immigrant-crime-victims-witnesses.html).

Efforts such as these would seem to be at cross-purposes with the forces that have contributed to the vitality of the American economy, particularly when the rest of the developed world has languished in recession for the last nine years. And these efforts are not limited to immigration.

There are also strong indications that Trump’s Department of Justice will not enforce civil rights laws protecting citizens from discrimination in the workplace. His Department of Labor is more likely to ease workplace regulations governing discrimination than enforce them, as Trump believes that these regulations stifle, rather than invigorate, businesses.

Decisions to rollback Obama-era worker protection policies already have taken shape with a revocation of the 2014 *Fair Pay and Safe Workplaces* order that was implemented to require that federal contractors comply with 14 different labor and civil rights laws.

According to an April 3, 2017, *NBC News* report, “the Fair Pay order included two rules that impacted women workers: paycheck transparency and a ban on forced arbitration clauses for sexual harassment, sexual assault or discrimination claims,” <http://www.nbcnews.com/news/us-news/trump-pulls-back-obama-era-protections-women-workers-n741041>. As its title indicates, the order was two-fold: 1) it required paycheck transparency to ensure women were being paid the same as their male colleagues; and 2) the “safe workplaces” requirement precluded forced secret arbitration for those who sought relief for sexual violations in the workplace, a provision that disproportionately impacted women to their detriment.

How Will Private Sector Respond to “Unburdening” The question that is outstanding is how will the private sector respond to this “unburdening?” As discussed, initial indications were that corporations would proceed as though little had changed. And perhaps the diversity and inclusion train left the station too long ago to turn back now.

But were these “indicators” merely smart public relations? Recent events may provide some clues as to how the larger culture will respond to this. And interestingly, *Fox News* may end up being either a harbinger of a more freewheeling, unleashed approach, or a cautionary tale of “freedom” run amuck.

On April 2, 2017, *The New York Times* reported that *Fox News* has paid around \$13 million in settlements to five women who alleged they were sexually harassed by Bill O’Reilly, formerly the host of *Fox News’s The O’Reilly Factor* (“Bill O’Reilly Thrives at *Fox News*, Even as Harassment Settlements Add Up,” https://www.nytimes.com/2017/04/01/business/media/bill-oreilly-sexual-harassment-fox-news.html?_r=0). This revelation came on the heels of a particularly challenging year for *Fox News* with the forced departure of Roger Ailes, *Fox News’s* Chairman and CEO, last summer for the same reason.

The reaction to *The New York Times* story from advertisers was swift and unflinching. According to an April 4, 2017, *CNN* report, more than 50 companies pulled their ads from *The O’Reilly Factor*, which was the single most popular program in cable news, <http://money.cnn.com/2017/04/04/media/list-oreilly-factor-advertisers-responses/index.html>. Companies including

Mercedes-Benz, Hyundai, BMW of North America, T. Rowe Price and GlaxoSmithKline have distanced themselves from the show in the short term.

More telling than even the act of pulling the ads is the consistency of the rationale offered by the various companies for it. For instance, Allstate Insurance stated it was “concerned about the issues surrounding the program” and that “inclusivity and support for women” are important company values.

The clothing company UNTUCKit said it was pulling ads because women are a majority of their workforce. But beyond that, CNN reported that UNTUCKit stated it is “important our corporate partners reflect the same principles of inclusivity and equality upon which we have built our brand,” <http://money.cnn.com/2017/04/04/media/list-oreilly-factor-advertisers-responses/index.html>

Hyundai released its own statement on April 3, explaining its actions by stating that “as a company we seek to partner with companies and programming that share our values of inclusion and diversity.” These responses cannot just be PR-driven. Companies are loathe to take these types of actions in such a public manner if they might negatively impact their bottom line. This is about money. And it was money that ultimately led to O’Reilly’s dismissal on April 19, as Fox continued to bleed advertisers.

This one story may have huge implications for what’s acceptable in the workplace in Trump’s America. Perhaps not surprisingly, President Trump publicly placed himself firmly in the O’Reilly camp, stating that he be-

lieved O’Reilly to be a good person who shouldn’t have settled. This endorsement cannot be dismissed merely as someone coming to the aid of a friend. Trump’s position as president gives his words added potency.

The big unanswered question is what taking this kind of public position coupled with the power of the federal government means for workplace protections over the next four years, at a minimum. And an even more interesting or disturbing question, depending on your perspective, is whether or how the president’s example sets the tone for the country writ large.

Although, for the time being, it appears the bottom line is dictating the terms in the marketplace, this tells us little if anything about what might happen in the less public sphere of the average company or small business. It cannot be assumed that this example is representative of the entire private sector.

The values of diversity and inclusion seem to be in tension with the values of “America First.” It should not be forgotten that President Trump’s campaign unleashed an undercurrent of grievance against what was characterized as “political correctness” that was stifling “real” Americans. We may be experiencing a reckoning as to what being a “real” American means.

Cultural and demographic imperatives appear to be driving the private sector’s continuing embrace of the value of diversity and inclusion. The government, in its current incarnation, is pushing back hard. Whose version of America will prevail is anyone’s guess. To paraphrase Bette Davis, it might be wise to buckle up, it’s going to be a bumpy ride.