

# Legally Compliant Strategies for Diversity Enhancement

Bay Area CCD ERC | October 11, 2013

Presented by: *Laura Schulkind*



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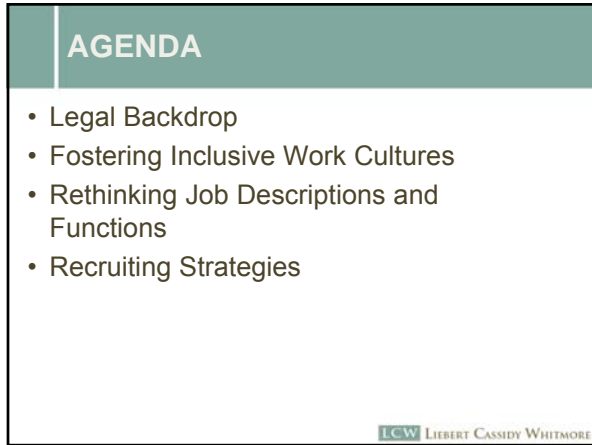
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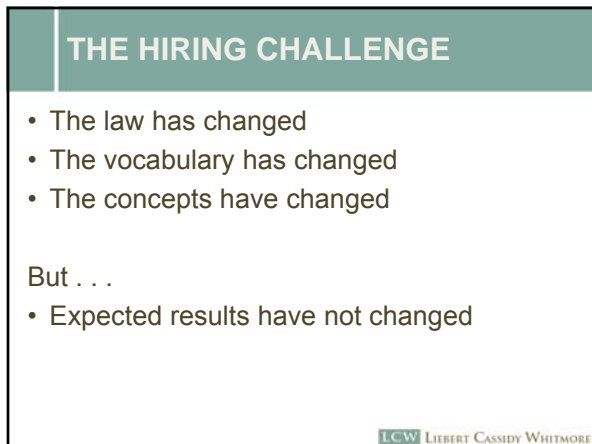
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**THE LAW HAS CHANGED**

- Law has long required “equal opportunity” employment
- Meaning of “equal” has changed

equal access → to equal treatment

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**THE VOCABULARY HAS CHANGED**

Affirmative Action → EEO

Affirmative Action Hiring → Diversity Hiring

Underrepresented Groups → Monitored Groups

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**THE CONCEPTS HAVE CHANGED**

Improving representation of specific underrepresented groups

→

Creating work environments that are “diverse” in many respects (race/ethnicity, gender, religion, age, disability, sexual orientation, socio-economic status, marital status, geography, etc.)

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**EXPECTED RESULTS**

- Eliminate under representation based on gender, race, color, ethnicity and national origin

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**LEGAL BACKDROP\***

- Federal/State anti-discrimination laws (Pre-“Prop. 209”)
- Law regulating hiring in community colleges
- Proposition 209
- Statutory response to Prop. 209
- Regulatory response to Prop. 209

\*Note: Review of law is a mandatory component of selection committee training.

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**FEDERAL/STATE EMPLOYMENT ANTI-DISCRIMINATION LAWS**

- Title VII
- ADA
- ADEA
- Title IX
- FEHA

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**FEDERAL/STATE EMPLOYMENT ANTI-DISCRIMINATION LAWS**

Collective effect, no discrimination on basis of:

- Race
- Religious creed
- Color
- National Origin
- Ancestry
- Physical/Mental Disability, Medical Condition
- Marital status
- Sex/Gender (gender identify/gender expression)
- Age
- Sexual Orientation
- Genetic Information

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**FEDERAL/STATE EMPLOYMENT ANTI-DISCRIMINATION LAWS**

Employment Discrimination Includes:

- Refusal to hire
- Rejection from training program
- Discharge from employment/training program
- Any decision affecting employment compensation, terms, conditions, privileges
- If based on protected status

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**FEDERAL/STATE EMPLOYMENT ANTI-DISCRIMINATION LAWS**

Proposition 209\*

- Prohibits “preferential treatment” on basis of:
  - Race
  - Sex
  - Color
  - Ethnicity
  - National Origin
- In Public:
  - Employment
  - Education
  - Contracting

\*Cal. Const. Art. 1, Sec. 31

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**PROP 209 & THE COURTS\***

- Targeted recruitment = unlawful preference

*\*Hi-Voltage v. City of San Jose  
Connerly v. State Personnel Board*

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**PROP 209:  
LEGISLATIVE RESPONSE**

- Recruitment may include:
  - “Focused outreach and recruitment” of women and minorities\*
  - Outreach that “should result” in diversification\*\*

*\*Gov. Code 11139.6(a)(1)  
\*\*Gov. Code 11139.6(d)*

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**PROP 209:  
LEGISLATIVE RESPONSE**

- Recruitment *must* include:
  - Outreach to economically disadvantaged\*

*\*Gov. Code 11139.6(a)(3)*

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**PROP 209:  
LEGISLATIVE RESPONSE**

- General recruitment includes\*:
  - General circulation media
  - Local/Regional media
  - Non-English media
  - Directed to women, minorities low income groups
  - General-market job fairs
  - Job fairs with high participation of women/minorities
  - Personal contacts

\*Gov. Code 11139.6(e)

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**PROP 209: LEGISLATIVE RESPONSE**

- Funding contingent on:
  - “...recruiting, training and advancement opportunities that will result in equal employment opportunities . . .”\*

\* EC 87101(c)

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***Fisher v. Univ. of Texas (2013)***

- 2013 U.S. Supreme Court decision
- Reinforces that race-based standards in the student admissions process must withstand “strict scrutiny”
- Race based standards must:
  - Serve a compelling state interest; and
  - Be narrowly tailored to achieve that interest

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**Fisher v. Univ. of Texas (2013)**

- Implications:
  - Prop. 209 already precludes consideration of race
  - If district considers race, sex, color, ethnicity or national origin under a Federal program, strict scrutiny will apply
  - Strict scrutiny is equally applicable to employment

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**RECRUITMENT & DIVERSITY POST - 209**

**Regulatory Response:\***

- Multi-step process to promote diversity

**Title 5, Section 51010 et seq.**

\*untested

Note: Draft regs are pending with the Dept. of Finance

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**RECRUITMENT & DISABILITIES**

- Reasonable accommodation for applicants
- Alternative formats on request
- Access to interviews
- Identify essential job functions

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**RECRUITMENT & DISABILITIES**

- Practice Pointer:
  - Beware of job announcements that have an inadvertent chilling effect on disabled job applicants
  - Example:
    - “The employee in this position must be able to sit, stand, walk, stoop, lift up to 20 lbs., etc. . .”

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**CCD HIRING POST-209\***

- Prior law explicitly mandated affirmative action
- Amended after *Connerly v. State Personnel Board*
- Two premises:
  - Diverse workforce serves students better
  - EEO hiring achieves diversity
- Challenge for CCDs: EEO hiring that achieves diversity

\* EC 87106-87108

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**CCD HIRING POST-209**

Lawful strategies fall into 3 categories:

- Work culture
- Job definition
- Recruiting strategies

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**CCD HIRING POST-209**

Focus on work culture\*

- to improve applicant pools
- to improve employee retention

\*E.C. 87101

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**FOSTER INCLUSIVE WORK CULTURES**

- Inclusion isn't tolerance
- Inclusion is:
  - Appreciation
  - Curiosity
  - Empathy
  - Enrichment

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**FOSTERING INCLUSIVE WORK CULTURES**

- Requires:
  - Leadership
  - Institutional commitment – at all levels

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**FOSTERING INCLUSIVE WORK CULTURES**

- Leadership:
  - Must have “buy-in” at the top
    - Boards
    - Chancellors
    - Presidents
  - Visible support for diversity and inclusion

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**INSTITUTIONAL COMMITMENT – AT ALL LEVELS**

- Starts with:
  - Personal commitment
  - Willingness to examine personal attitudes & conduct

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**INSTITUTIONAL COMMITMENT - AT ALL LEVELS**

- Community wide “buy-in” essential for success
- Ensure input from all stake holders
- Utilize “principles” of shared governance
- Actual procedures will depend on district shared governance agreements
- Mutual agreement with faculty for faculty hiring procedures
- Inter-departmental collaboration—H.R and academic departments

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**INCLUSIVE WORK CULTURES AND RETENTION**

- Mentoring Programs
- Opportunities for growth
- Classified → Academic
- Leadership opportunities
- Environment within schools
- Cultural events
- Access

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**CCD HIRING POST-209**

- Fostering inclusive work cultures

**WHAT WORKS?**

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**CCD HIRING POST-209**

Rethink job functions and job descriptions

- Modernize and update by asking:
  - Should we redefine the job?
  - How do issues of diversity impact this work?
  - What job-related criteria value/attract diverse candidates?
  - What job-related criteria assess “sensitivity to diversity. . .”

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**Rethink Job Functions**

- For example, in faculty context:
  - Global perspective is consistent with CCD mission
  - Is global perspective evident in how jobs are defined and knowledge/skills required?
  - If not: reexamine curriculum, programs, majors, etc.

\* Note: this will both improve work culture and diversify pool of qualified candidates.

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**RETHINK JOB DESCRIPTIONS, SPECIFICATIONS AND QUALIFICATIONS**

- Identify job-related criteria likely to enhance applicant pool diversity
- Develop job descriptions reflecting these criteria

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**RETHINK JOB DESCRIPTIONS AND QUALIFICATIONS**

- What are possible criteria (if job related) that:
  - Will recognize the knowledge, skills, abilities of a more diverse group of candidates?

For....

- a biology professor?
- a bookstore manager?
- a dean?

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**IMPROVE ASSESSMENT OF “SENSITIVITY TO DIVERSITY”**

- Applicants still must demonstrate:  
“sensitivity to and understanding of the diverse academic, socioeconomic, cultural, and ethnic backgrounds of community college students.”\*
- For academic and administrative positions  
**TREAT THIS AS A MINIMUM QUALIFICATION!**

\*EC 87360

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**EXERCISE:**

**“WHAT ARE WE LOOKING FOR?”**

- Break into small groups
- Pick position to consider: Biology Professor, Dean of Humanities, Bookstore Manager
- Identify at least 3 potential barriers to hiring qualified individuals from a traditionally underrepresented group
- Identify at least 3 criteria for assessing “sensitivity to diversity” that are related to specific position
- Identify at least one way job description can “go global”

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**RECRUITING STRATEGIES**

- Recruiting strategies that:
  - Create highly qualified, diverse applicant pools
  - From which you hire “blind”

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**RECRUITING STRATEGIES**

- Most important recruiting strategies precede the interview:
  - Leadership
  - Community buy-in that this really matters
  - Solid, updated job descriptions & announcements
  - Well-trained screening & selection committees

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**RECRUITING STRATEGIES**

- Recruiting strategies that work:
  - Add to (don't replace) traditional avenues
  - Personal connections with career centers
  - Outreach to professional organizations
  - Groom your own students
  - Make district attractive to applicants
  - You are always recruiting and hiring
  - Assume a buyer's market

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**RECRUITING STRATEGIES**

What this means for selection committees:

- Understand educational value of workforce diversity
- Know district criteria for assessing "sensitivity to diversity"
- Develop appropriate questions to assess criteria within context of position

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