

Chicago Daily Law Bulletin®

Volume 164, No. 152

Serving Chicago's legal community for 163 years

Understanding implicit bias is the first step to reducing it — and ending it

After nearly 25 years as an employment lawyer, I have seen how implicit bias can negatively impact businesses of all types and sizes at all stages of the employment life cycle.

Part of my practice that I enjoy most is providing training to companies on how to reduce the risks of claims of harassment and discrimination. Over the past several years, that training has focused more and more on taking steps to reduce implicit bias in the workplace.

I have had the chance to partner with the Equal Employment Opportunity Commission and the Illinois Supreme Court Commission on Professionalism on my training. Seeing their perspectives on these issues and their ideas on how to reduce bias in the workplace has enabled me to better represent and defend my own corporate clients.

We all have inherent biases; learning to recognize and control unintended outcomes of those biases is the challenge we face.

For example, imagine that an employer has a high-profile project that requires significant technological ability. Faced with choosing between two employees, a baby boomer and a Gen Xer, the employer automatically opts for the younger worker, assuming his or her age makes them more likely to be comfortable with technology.

This is a common example of how unconscious bias can lead to imperfect decisions in the workplace not based on facts, but based on preconceived views of general characteristics.

Implicit bias does not necessarily stem from a person's intention. An employer may intend to make employment decisions based on facts and yet still perpetuate preconceived and inaccurate assumptions.

And this can have consequences on the performance of a business on several levels.

In the example above, when the employer rewards the younger employee with an important

project — not because of that employee's actual skill set but based on an assumption — the employer risks a poor outcome if the younger employee lacks the needed skills.

The employer also has lost out on the wisdom and experience the older employee may have brought to the project alongside the technical skills that employee may very well possess.

The employer has now fostered a work environment in which stereotypes instead of merit impact employees' career paths. The perception or reality that the workplace does not evaluate based on ability or results can have a negative impact on morale and productivity.

Implicit bias affects our perception of others and of reality, and that impacts our decision-making about the particular aspects of people's work we pay most attention to, how actively and openly we listen to ideas and how much we affirm work and skills.

These small daily decisions shape the paths of employees' careers, enabling some to move forward while causing others to stall out. And most employers have no intention of creating this result.

Implicit bias can happen at every stage of the employment process, including recruitment,

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hiring, orientation, mentoring decisions, job assignments, promotions, performance reviews, marketing campaigns, discipline and termination.

And it can be exercised at all levels, from the senior leadership to the most junior employee. Anyone who exercises power is at risk of perpetuating these biases and creating barriers to opportunity for those who could benefit your business.



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Moreover, government agencies and courts recognize the role of implicit bias in evaluating cases involving claims of discrimination based on protected characteristics under the law such as age, race, religion, national origin and gender.

The EEOC has defined discrimination to include "unconscious stereotypes regarding the abilities, traits or performance of individuals belonging to certain racial groups."

The Supreme Court recently suggested in the majority opinion of *Texas Department of Housing and Community Affairs v. Inclusive Communities Project Inc.*, 135 S.Ct. 2507 (2015), that discrimination could be shown through unconscious prejudice.

How do we reduce the impact of the inevitable bias that comes into our workplace? There are three top actions every company should take now:

First, examine and re-evaluate the language used in recruiting materials, internal communications and company handbooks.

Make sure these documents are current on the law and that they are as free as possible from bias. Have a lawyer review the policies in conjunction with the business people implementing the policies. Find out how these policies have been and are being actually implemented in the workplace.

Second, pay special attention to the performance review process. Are the assessments strictly limited to job duties and performance, or are they overly broad in ways that might reward some employees and penalize others based on personal characteristics that do not involve merit? Take steps to ensure that the reviews are complete and honest and tied to the particular job duties of the position involved. Pay particular attention to how the reviews affect promotions and raises and the general progression of employees at your business.

Third, invest in good training by an outside professional. Look for someone with experience and make sure the training is customized for your business. Live and interactive training is most effective and provides employees with the opportunity to ask questions and follow up when needed.

Make sure that employees at every level of your business attend the training. Top level employees are important role models and set the tone for your entire business. If they take implicit bias seriously, others will.

Making an effort to reduce bias ensures that employment decisions are more consistently made based on the reality of and needs of the workplace, thereby increasing productivity and profitability and reducing potential legal liability.

Recognizing that implicit bias affects every employer is the first step in ensuring that this bias is not holding back your employees or your business. Reducing implicit bias now will help further and improve your workplace for the future.