CLIENT ALERTS & INSIGHTS

Amid Backlash, Walmart Joins Trend of Truncating Diversity, Equity, and Inclusion Initiatives

DECEMBER 6, 2024

Authors: W. Eric Baisden, Adam Primm

Once known for its catchy commercials about rolling back prices, Walmart-America's largest private employer-is rolling back something else: its diversity, equity, and inclusion (DEI) initiatives. The retail giant's announcement comes amid backlash from conservative activists, including an anti-DEI social media campaign aiming to "end wokeness," with Walmart as one of its several targets. That campaign has resulted in a number of large public companies curtailing or eliminating DEI efforts in the private sector, claiming Walmart's changes as "the biggest win yet for our movement."

As we anticipated in the wake of last year's U.S. Supreme Court decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, which held that race may not be used as a factor in college admissions decisions, that ruling has emboldened challenges to DEI initiatives among private employers. The *Harvard* decision stated that such admissions programs wrongly focused on "the color of [the applicant's] skin" rather than "challenges bested, skills built, or lessons learned." While specific to college admissions, this rationale has been extended to the private sector as, soon after the *Harvard* decision, DEI hiring programs that prohibited applicants who did not identify as people of color, members of the LGBTQ community, or those with disabilities, were challenged as intentional discrimination in court.

Walmart will no longer participate in the Human Rights Campaign's (HRC) Corporate Equality Index, give priority treatment to suppliers based on race or gender, sell certain LGBTQ+-related items on its website, conduct racial equity training, or extend its partnership with the Racial Equity Center. Additionally, the company will end its use of "Latinx" to refer to Hispanic individuals. It is within this landscape that Walmart joins an array of private companies, including Tractor Supply Co., Ford, John Deere, Harley-Davidson, Molson Coors, Brown-Forman Corp. (maker of Jack Daniels whiskey), and Lowe's, who have recently curtailed some of their DEI practices. Tractor Supply Co. eliminated all its DEI roles and retired its current DEI goals. Molson Coors also announced it was ending "representation goals" for its suppliers and employees. Lowe's is "reviewing" its DEI initiatives. Ford's CEO wrote to employees that "the external and legal environment related to political and social issues continues to evolve" and that the automaker will no longer comment publicly on "polarizing issues of the day." Like Walmart, these companies also pulled out of the HRC's Corporate Equality Index and many ended sponsorships of Pride-related events.

Other companies have clarified their lack of DEI programs. Harley-Davidson confirmed that it has "not operated a DEI function since April 2024, and we do not have a DEI function today" and that "we do not have hiring quotas and we no longer have supplier diversity spending goals." Harley-Davidson is also reviewing "all sponsorship and organizations we are affiliated with." John Deere similarly emphasized that "the existence of diversity quotas and pronoun identification have

never been and are not company policy" and proclaimed that it will no longer sponsor "social or cultural awareness" events. Finally, Brown-Forman Corp. will winddown its "quantitative workforce and supplier diversity ambitions" and review its remaining DEI initiatives to comport "with an evolved strategy."

It is unclear what DEI initiatives Walmart or other companies will retain, or which other employers may join this trend, but "what's happening now reminds me of what happened in reverse after George Floyd," remarked David Glasgow, executive director of the Meltzer Center for Diversity, Inclusion and Belonging at New York University. In 2020, "you'd be shamed or embarrassed if you didn't have DEI initiatives - now political circumstances have shifted so much that pressure is going in the other direction." With the pendulum now swinging away from DEI, more employers are likely to follow suit and scale back or eliminate DEI programs in the near future.

Eric Baisden is a Partner and Co-Chair of Benesch's Labor & Employment Practice Group. He can be reached at 216.363.4676 or ebaisden@beneschlaw.com.

Adam Primm is a Partner of the Labor & Employment Practice Group. He can be reached at 216.363.4451 or aprimm@beneschlaw.com.