

A Pendulum Shift in Attitudes about Racial Inequity, Diversity and the Unique Implications for Businesses

At various points after mid-March 2020, the COVID-19 global pandemic forced many businesses to shutter their doors and rapidly reduce the number of employees in their facilities and offices. Some of the workforce moved remote, and by June, the collective consciousness of the country was focused on more than the pandemic, namely on the structural racism that has plagued this country for centuries after witnessing the death of George Floyd.

As the economy reopened, consumers re-entered the marketplace and employees returned to their workplaces, and Millennials and Generation Z focused on the conditions of the institutions they patronize and in which they work. Their analysis exposed a disconnect between our society's proclamation of equality and the institutional inequities embedded in the fabric of our great union. It prompted Millennials and Zennials to mobilize and attempt to upend institutional racism and amplify public awareness and intolerance to structural inequities.

Younger Generational consumers and employees returned with a different professional mindset than they held prior to the pandemic. They appear less inclined to accede the status quo for the sake of professionalism. They also seem less motivated to accept inequalities for the chance of climbing the corporate ladder and less likely to allow institutionalized structures that perpetuate inequities in any fashion to remain intact.

Non-white racial groups will represent 20% of total US buying power in 2025—up from 13% in 2000, 16% in 2010, and 18% in 2020

US Buying Power*, by Race/Ethnicity, 2000-2025

billions

	2000	2010	2020	2025	Increase, 2000 – 2025
White	\$6,425.0	\$9,479.0	\$14,191.0	\$17,350.0	x 2.7
Black	\$611.0	\$979.0	\$1,574.0	\$1,978.0	x 3.2
Asian	\$278.0	\$614.0	\$1,297.0	\$1,802.0	x 6.5
Multiracial	\$60.6	\$149.2	\$286.4	\$396.8	x 6.6
Native American	\$40.0	\$84.0	\$140.0	\$178.0	x 4.5
Total	\$7,415.0	\$11,306.0	\$17,489.0	\$21,705.0	x 2.9
—Hispanic**	\$496.0	\$1,044.0	\$1,950.0	\$2,599.0	x 5.2

*Note: numbers may not add up to total due to rounding; racial group figures add up to total, while a separate breakout for non-Hispanic is not shown; *defined as disposable personal income, meaning the share of total personal income available for personal consumption, personal interest, payments, and savings; **"Hispanic" is an ethnicity rather than a race, and can be of any race*

Pipeline Poking

Yet, a growing list of lawsuits against corporate diversity and inclusion programs are making their way through the courts this year, most filed by conservative activists emboldened by the Supreme Court's June 2023 ruling effectively abolishing affirmative action in college admissions and providing a roadmap for those now seeking to set similar precedent in the workplace. <http://www.chicagolawbulletin.com/getdoc/1e1b3661-30aa-4f73-80a9-0011aeced3eb/companies-quietly-alter-dei-programs-amid-legal-ch>.

Illustrative recent or pending legislation in US States

Focus	State
Legislation to prohibit public colleges, universities, and institutions from funding, promoting, undertaking DEI programs	Alabama (SB 129), Arizona (SB 1694), Florida (HB 999 / SB 266), Indiana (HB 1338), Iowa (HF 616), Kansas (SB 155), Kentucky (HB 6), Missouri (HB 75), Ohio (SB 83), Oklahoma (SB 870), South Carolina (HB 4289), Texas (HB 5127), Utah (HB 451)
Legislation to prohibit postsecondary education institutions from providing admission or aid to students based on support / opposition to a political ideology	Kansas (HB 2460), North Carolina (HB 607)
Legislation to prohibit higher education institutions from requiring students, applicants, employees to answer questions about ideologies on DEI	Missouri (SB 410)
Legislation to prohibit public institutions from affirming "divisive concepts" relating to race, sex, religion	Alabama (SB 129), Kentucky (SB 6), Tennessee (HB 1376), Utah (HB 261)
Legislation to prohibit public institutions from giving preferential treatment to individuals based on race, ethnicity, DEI	Florida (HB 931 / SB 958) Louisiana (SB 128)
Legislation to prohibit public colleges, universities, and institutions from considering diversity training, political and ideological bias in recruitment	Montana (SB 222), North Dakota (SB 2247), Tennessee (SB 102)

DEI experts say the chilling effect associated with the legal backlash over corporate efforts to address workplace inequity appears evident. Notably, in October 2023, Morrison Foerster and Perkins Coie expanded their diversity fellowship programs to applicants of all races following attacks from the American Alliance for Equal Rights, a nonprofit founded by anti-affirmative action Edward Blum. *Id.* Similarly, Pfizer nixed race-based eligibility requirements for a fellowship program designed for college students of Black, Latino and Native American descent. *Id.*

Barriers to Access

The assault on DEI efforts to upend racial inequity extends to beyond pipeline programs into access to business opportunity.

Illustrative recent or pending litigation

Title	Level	Filed	Summary
<i>American Alliance for Equal Rights (AAER) v. Fearless Fund Management</i>	US District Court, Georgia	August 2023	Challenges Fearless Fund Management for operating a racially discriminatory grant program (focus on black women entrepreneurs). Claims that explicit racial exclusion violates Section 1981 of Civil Rights Act, 1866.
<i>AAER v. Hidden Star</i>	US District Court, Texas	2023, dismissed 2024	Challenges nonprofit that provides grants to support “female, minority, and low-income entrepreneurs”. Claims that program’s race and gender-based eligibility restrictions violate Section 1981 of Civil Rights Act.
<i>AAER v. Zamanillo</i>	US District Court, DC	February 2024	Complaint and motion for injunction against Jorge Zamanillo, Director of the National Museum of the American Latino. Claims the Museum’s internship program (focused on Latino/a/x undergraduates) constitutes racial discrimination and violation of the Fifth Amendment.
<i>AAER v. Kay Ivey</i>	US District Court, Alabama	February 2024	Lawsuit to challenge Alabama’s state law, that stipulates at least two AREAB members of the Alabama Real Estate Appraisers Board (AREAB) must be from racial minorities.
<i>Roberts et al. v. Progressive Preferred Insurance Company</i>	US District Court, Ohio	August 2023	Class-Action Complaint against Progressive Insurance and nonprofit partner Hello Alice, alleges their “Driving Small Business Forward” grant - which awarded \$25,000 to 10 black entrepreneurs - is racially discriminatory.
<i>America First Legal (AFL) v. US Department of</i>	US District Court, DC	February 2024	Lawsuit to enforce Freedom of Information requests against the Department of Education, for records and communications related to its

In May 2023, after settlement of a lawsuit led by the conservative Wisconsin Institute of Law & Liberty, Comcast expanded the pool of applicants for a grant program originally intended for women and people of color to all business owners regardless of background. *Id.* Next, in October 2023, the group attacked the U.S. Department of Transportation’s Disadvantaged Business Enterprise program which requires 10% of funds authorized for highway and transit federal assistance programs be expended with small businesses owned by women, minorities or other socially and economically disadvantaged people—ironically, this DOT’s program dates back to the Ronald Reagan administration. *Id.* Contrast the conservative-agenda led onslaught against DEI efforts with the fact that presently less than 1% of a combined share of venture capital funding is invested in businesses owned by Black and Latina women according to digitalundivided, a nonprofit advocacy group.

Reeling in Retention and Advancement

Adding insult to injury, the Civil Rights Act of 1866—originally intended to protect formerly enslaved people, which prohibits racial discrimination in contract agreements—is the vehicle of choice for many of the lawsuits attacking DEI programs. Without dispute, Title VII of the Civil Rights Act of 1964 prohibits considering race for hiring or promotion. The efforts to dismantle DEI generally target programs that clear race-based eligibility components.

https://www.chicagolawbulletin.com/companies-quietly-alter-dei-programs-amid-legal-challenges-20240115?utm_source=subscriber&utm_medium=email&utm_campaign=headlines&utm_content=lc-companies+quietly+alter+dei+programs+amid+legal+challenges

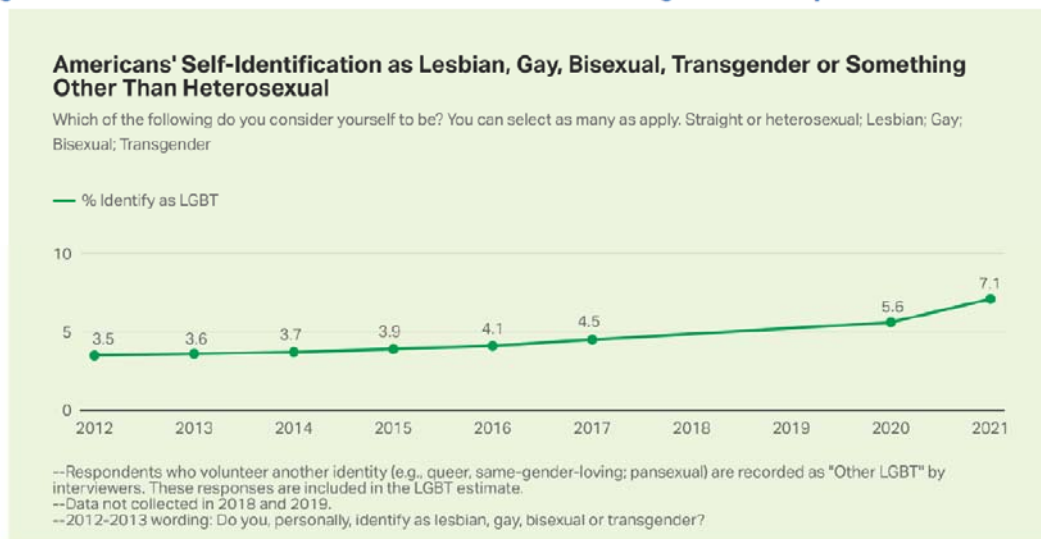
Carmen Rojas, president and CEO of Marguerite Casey Foundation views the attacks as a correlative response to “the modest gains that may have been made and that were made in the 20th

century to address centuries of harm committed against people of color in this country.” <http://www.chicagolawbulletin.com/getdoc/1762a4bd-8903-4702-956e-9804e29d3506/As-DEI-policies-come-under-legal-attack,-philanthr>. Disney and Starbucks are among companies that, to date, prevailed against legal challenges to their DEI policies.

Active Resistance

According to data compiled by [Statista](#), Millennials and Zennials are the largest age group in the country, at over 129 million. Millennials and Generation Z are also more diverse than previous generations, with over 44 and 48 percent, respectively, belonging to a minority race or ethnic group. Millennials and Zennials are unlike prior generations which are [more likely to assimilate](#) into existing structures to avoid disruption and gain acceptance.

The percentage of US adults who self-identify as lesbian, gay, bisexual, transgender has doubled since 2012, according to Gallup



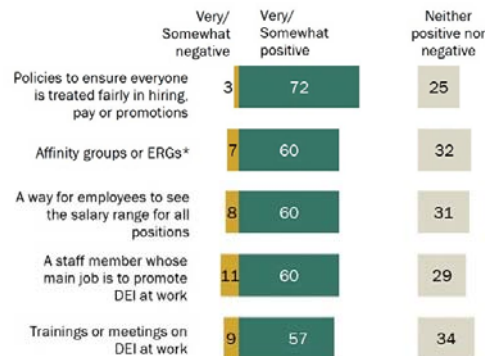
Source: Gallup, [LGBT Identification in U.S. Ticks Up to 7.1%](#), 2022

Millennials and Zennials, with their diverse composition, accentuate authenticity, belongingness and distinctiveness. They are now more emboldened to be authentic and create constructive disruption.

Research shows Millennials and Zennials are also ambitious, results- and team-oriented, self-confident and lack fear to assume stretch projects, question established authority, or challenge the status quo.

A majority of workers say DEI-related policies and resources have had a positive impact at their workplace

Among employed adults who say each of the following is available where they work, % saying each has had a ___ impact where they work



*Full question wording asked about groups created by employees, sometimes called affinity groups or employee resource groups (ERGs), based on their shared identities or interests such as gender, race or being a parent.
 Note: Based on workers who are not self-employed and work at a company or organization with 10 or more people. Share of respondents who didn't offer an answer not shown.
 Source: Survey of U.S. workers conducted Feb. 6-12, 2023.

Source: Pew Research Center, [Diversity, Equity and Inclusion in the Workplace](#), 2023

This mindset has been known to upset the apple cart and cause employers to rethink cookie-cutter programs that guide employees through the employment life cycle.

Millennials and Zennials' exposure to the collision of two pandemics, COVID-19 and structural racism, showed them the danger and trauma of being Black, particularly in America. On the same day in separate cities over a thousand miles apart, we witnessed a dishonest 9-1-1 call by a white woman (colloquial "Karen") reporting a threat on her life by a Black man in New York's Central Park and the murder of George Floyd by police officers sworn to serve and protect Mr. Floyd's general health and welfare (Minneapolis). These incidents disrupted the younger generations' sense of equity in a poignant way. Members of the Black community will tell you that such atrocities, however alarming, are frequent, if not daily — add Breonna Taylor, Eric Garner, Taylor Bracey and countless others to the list.

The general absence of fear when tackling seemingly insurmountable projects, or challenging the status quo, indicates that Millennials and Zennials are unlikely to be pacified by esthetic changes to structures that perpetuate racial inequity and will most likely continue to demand for employers to deliver concrete, measurable actions. Millennials and Zennials want to see immediate evidence of substantive change. Although structural racism cannot be cured instantaneously, Millennials and Zennials actively pursue identification, implementation, and execution of a creative and comprehensive strategic plan to facilitate transformative growth of our nation toward a more perfect union.

The pendulum is moving, whether it swings in full retraction of DEI efforts to uproot institutional racism and realize a more inclusive workplace, or stymies and reverts towards equity and belonging, remains the question of the day – as well as what role companies play, if any.