

# Unconscious Bias in the Workplace



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# How Can Bias Impact Your Workplace?

## Legal Repercussions



## Business Repercussions



# The Laws that Can Apply to You

	<b>Federal Laws</b>	<b>State Laws</b>
20+ Employees	The Age Discrimination in Employment Act (“ADEA”), Title VII of the Civil Rights Act (“Title VII”), The Americans with Disability Act (“ADA”)	The Fair Employment and Housing Act (“FEHA”)
15+ Employees	Title VII and the ADA	FEHA
5+ Employees		FEHA
Any Sized Employer		Section 12940(j) of the California Government Code (part of FEHA) prohibits <b>harassment</b> , based on a protected category, of an employee, applicant, unpaid intern, volunteer, or independent contractor even when there are fewer than five employees.

# Additional State Legal Bases

- Wrongful Termination in Violation of Public Policy
- California Civil Code Section 52.1 (Bane Act)
  - Arises when there are threats, intimidation, or coercion.
- California Civil Code Section 51.7 (Ralph Act)
  - Requires a violent incident or an intimidating threat of violence that is committed because of a specifically defined characteristic.

# Lost Client Opportunities

- Assumptions can negatively impact your client development.
  - Who do you assume is the decision maker?
  - Who do you assume has a background in financial transactions?
- Biases can limit the types of clients you pursue and attract.

# Harsh Realities

- No matter how hard an employer tries to prevent it, harassment and discrimination are likely to happen.
  - Racism and sexism are not gone from our society, they have just become less openly discussed and explicit.
- Everyone comes in to the workplace with implicit biases.
  - People carry with them ingrained cultural stigmas and stereotypes that they may not even be aware of.

# What Types of Biases Are There?

- Performance Bias
- Attribution Bias
- Likeability Bias
- Parental Bias
- Disability Bias
- Affinity Bias
- Multiple/Intersectional Bias

# Workplace Culture and Cliques

- Implicit and (hidden) explicit biases can be enflamed by a workplace culture that accepts and nurtures such behaviors.
  - Cliques naturally form between individuals with similar affinities.
  - Not everyone likes all of their co-workers, and small things can, and often do, escalate.



# Cultural Changes

- Managers can proactively ensure that work assignments and team/project assignments are assigned fairly and equally.
  - Glamour Work vs. Office Housework
  - Internal Committees/Task Forces vs. Revenue Generating Committees/Task Forces
- Employers can hold everyone accountable.
- Managers and employees can focus on de-escalation.

# Training

- California Now Requires Sexual Harassment and Abusive Conduct Prevention Training for all Employers with 5+ Employees
  - Supervisory Employees - Two hours every two years.
  - Non-Supervisory Employees - One hour every two years.
- Non-Mandated Trainings
  - Annual Non-Gender Focused Discrimination/Implicit Bias Trainings
  - Incident Specific Trainings

# The Effects of Implicit Gender Bias on the Legal Industry

- The Pay Gap
- Low Percentage of Female Partners
  - Despite essentially equal hiring numbers at the associate level, women make up less than a quarter of law firm partners.
  - Minority women make up less than three percent of law firm partners and are the most underrepresented group.
- Low Percentage of Female Judicial Officers

# The Effects of Implicit Racial Bias on the Legal Industry

- Low Percentage of Minority Partners
  - Despite increases in the enrollment of minority students in law schools and the increased hiring of minority associates, less than ten percent of law firm partners are minorities.
- Low Percentage of Minority Judicial Officers
  - Only about twenty percent of the sitting judiciary at the state and federal levels are minorities.

# Case Studies

- Nike
  - Sexual Harassment
  - Gender Discrimination/Disparate Treatment
- Big Law “Mommy-Tracking” Cases
- Problem Clients
  - Lawyer Stereotypes
  - “I like looking at you.”

# A Final Case Study: Taj and Achieving a 50/50 Gender Balance

- Get commitment from leadership.
- Cases and “Choice” Assignments were assigned equally between men and women.
- Promotions and compensation were tracked.
  - In cases of maternity and family leave, or reduced work hours, performance was adjusted to its full time equivalent.
- Client biases were confronted and dealt with.

# Bias Interrupters

- Use specific performance examples in reviews or in describing work product.
- Separate personality from skills.
- Look at current performance and not future potential.
- Do not overgeneralize traits into “horns” or “halos.”
- Do not allow “tokenism” to develop.



# Any Questions?

- Implicit Bias Tests:

<https://implicit.harvard.edu/implicit/>

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