

Diversity, Equity and Inclusion Metrics in Executive Compensation

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As Liz Dunshee has already [explained](#), the Supreme Court's decision to side with Students for Fair Admission in *Students for Fair Admissions v. Harvard*, which struck down the use of "affirmative action" in college admissions, caused concern among compensation committee members, compensation consultants and the executives and managers incentivized to enhance diversity, equity and inclusion (DE&I) at their employers about the risk of litigation and activism associated with corporate DE&I programs and metrics. While the decision only relates to the educational sector, this [Morrison Foerster memo](#) explains several ways in which corporate DE&I programs could be affected.

These include:

- Increased challenges to workplace DE&I programs
- Increased legislation against DE&I programs, especially from the Republican-led House and red states
- Increased litigation challenging corporate DE&I programs
- Increased challenges to diversity recruitment

Many companies have been increasing their disclosures about DE&I programs and incentive metrics – either in SEC filings or on their websites. While investors welcome these disclosures, they can also be used to accuse companies of discriminatory hiring practices. In fact, an organization that calls itself America First Legal has already filed cases with the Equal Employment Opportunity Commission (EEOC) at 33 companies. In addition, the National Center for Public Policy Research has made several [attempts](#) at suing Starbucks over its DE&I policies.

While the *Students for Fair Admissions v. Harvard* decision has undoubtedly increased the risks associated with DE&I programs, companies should continue to recognize the benefits of DE&I programs while partnering with legal counsel to ensure that DE&I initiatives, goals, and decisions comply with applicable law.

Shortly after the ruling, the EEOC issued a [statement](#) noting that the SCOTUS ruling does not address corporate DE&I programs. "It remains lawful for employers to implement diversity, equity, inclusion, and accessibility programs that seek to ensure workers of all backgrounds are afforded equal opportunity in the workplace," said the chair of the Commission.

In an earlier guest [post](#) on CompensationStandards.com by Orrick attorneys, they noted that: "While there are few cases in this area to date, in light of the recent Supreme Court decision, companies who incorporate DEI metrics into executive compensation

programs should do a privileged evaluation of their programs to determine whether their goals actually impact individual employment decisions, which can be problematic, or merely inspire broader initiatives, such as improvements in outreach and in the composition of candidate and interview pools or evaluation techniques, which is legally permissible. In other words, rewarding executives for their overall efforts on DEI rather than for achieving targeted metrics will mitigate some of the legal risk.”

On the other hand, investors are far more interested in seeing quantitative metrics than qualitative ones.

A recent [Wolters Kluwer article](#) gives an updated look into how DEI website messaging is changing at companies targeted by litigation in the past few months. For some, language was updated with more general references to diverse or marginalized communities, replacing references to specific minority or underrepresented groups.

ESGAUGE examined the use of DE&I metrics in executive compensation plans over the 2023 and 2024 proxy seasons, collecting 595 metric records in both years, including many companies with multiple DE&I metrics.

There were 280 records in 2023, and 315 in 2024, including 268 individual companies in 2024. The analysis was limited to metrics for CEOs, rather than for the executive group as a whole.

Some 38 companies (12.5%) reported using DE&I metrics in their incentive plans for the first time in 2024.

For the largest group, 197 companies (64.5%), metrics were described using the same or very similar language in 2024 as compared to 2023.

While the language surrounding DE&I metrics at American Axle & Manufacturing Holdings, Inc. changed slightly, the fundamentals of metrics remained the same.

For example, 2024's [proxy](#) stated:

Demonstrated meaningful progress along our DEI strategy roadmap, including the early achievement of our 2030 U.S. workforce BIPOC goal in 2023, launching the first regional DEI Steering Committee in Mexico and a new associate resource group in Europe, and winning six Forbes Best Employers awards including Best Employer for diversity, new graduates, veterans and women. Certain AAM associates were also recognized with Women of Color and Black Engineer of the Year awards.

While [2023's](#) stated:

Demonstrated meaningful progress along our DEI strategy roadmap, including hiring AAM's first Director of DEI, launching AAM's 2+1 global DEI program, conducting an associate engagement survey and creating action plans in response to the results and adding three new associate resource groups. Our progress earned AAM recognition by being placed on the Forbes list of Best Employers for Diversity.

Some 44 companies (14.5%) increased the precision of the language describing their targets, typically through the inclusion of quantitative metrics, but also by adding a more detailed description of actions achieved.

For example, PepsiCo gave a more precise description of metrics in [2024](#):

Facilitated important progress toward our diversity, equity, and inclusion goals by improving diversity of representation at the managerial level, maintaining pay equity, and developing inclusive leaders. We achieved 45% women in management roles globally. In the U.S., we achieved 9.2% Black managerial representation and 10.3% Hispanic managerial representation. In 2020, we announced our aspirational representation goals to increase the U.S. Black and Hispanic managerial population to 10% by 2025 to mirror the workforce availability of the communities where we work. We remain on track to meet this goal with respect to U.S. Black managerial representation, and we will strive to maintain our U.S. Hispanic managerial representation to mirror workforce availability.

While in [2023](#), it said:

Advanced our people agenda by continuing our legacy of leading with diversity, equity, and inclusion as we rely on the diversity of our teams to innovate and build our brands, reinforced by increased representation across all key demographics, including the increase of Black and Hispanic representation at the managerial level, at 9.0% and 10.1%, respectively, as we remain on track to meet our goal of improving managerial representation in the U.S. to 10% by 2025.

The PepsiCo disclosures are an example of greater precision both in quantitative metrics and in types of actions.

Only 2 companies (less than 1%) increased the difficulty of their metrics, while 23 companies (7.5%) used vaguer language. Of course, some metrics were vague in the first place, referring only to “DE&I metrics....”

At [Alaska Air](#), while the vesting of its long-term incentives is precisely described, the metrics are less so:

The PSU awards granted in 2022 are scheduled to vest at the end of the January 1, 2022 through December 31, 2024 performance period and are based 80% on the Company's TSR performance relative to the same airline peer group that was used for the 2020 awards and 20% on the Company's progress towards advancing BIPOC representation at the senior leadership level.

Representation Metric (1)	
BIPOC Representation Metrics on 12/23/2024	Percentage of D&I Stock Units that Vest
30% and above	200%
23%	100%
21%	50%
Below 21%	0%

However, an example of a company becoming vaguer about its metrics can be found at Apple.

- 2023 Select [Highlights](#) were:
 - Double-digit increase in female leadership hiring and overall female leadership representation increases in all categories
 - Strong employee engagement scores across all genders globally and race/ethnicities in the 2023 US corporate survey
- 2022 Select [Highlights](#) were:
 - 47% of open leadership roles filled with women during calendar 2021
 - Record number of female, Black, and Hispanic/Latinx employees hired during calendar 2021

The word "belonging" also started to creep into DE&I metrics, as if a vaguer way of describing such programs were needed, as at real estate firm Redwood Trust. Also, at payments and data company Deluxe Corporation, its 2024 proxy [statement](#) included leader performance goals: "which includes, but is not limited to, items such as creating a "belonging culture," building a diverse talent pipeline, and promoting ERGs."

Most companies trumpeted their executives' achievements, but some [admitted](#) to missing targets, for example investment firm State Street, for two years in a row. The disclosures from the 2023 proxy are given below:

Highlights of our human capital strategy and initiatives from 2022 and early 2023 are noted below. Additional detail, including EEO-1 data, can be found on our website.

Workforce Profile	Diversity, Equity and Inclusion (DEI)	Employee Benefits and Wellbeing						
<i>Managing and supporting approximately 42,000 employees located in 31 countries</i>	<i>Working to accelerate progress on our DEI programs, including via our 10 Actions Against Racism and Inequality, or “10 Actions”</i>	<i>Offering comprehensive and flexible benefit programs designed to meet the changing needs of our employees and their families</i>						
<u>Employee Profile</u>								
	<ul style="list-style-type: none"> Achieved the Black Equity at Work Bronze Certification from Management Leadership for Tomorrow (MLT), which partners with organizations to create meaningful, measurable progress toward workplace equity – the first and only Global Systematically Important Financial Institution (G-SIFI) to do so; received plan approval as a launch partner for MLT’s Hispanic Equity at Work certification 	<ul style="list-style-type: none"> Flexible work programs help employees manage the demands of their personal and professional lives 						
<table border="1"> <thead> <tr> <th></th> <th>Women (Global)</th> <th>Employees of Color (U.S. only)</th> </tr> </thead> <tbody> <tr> <td>Management (Senior Vice President+)</td> <td>35%</td> <td>21%</td> </tr> </tbody> </table>		Women (Global)	Employees of Color (U.S. only)	Management (Senior Vice President+)	35%	21%	<ul style="list-style-type: none"> Despite not meeting all of our five-year diverse representation objectives, continued to make progress on our diversity initiatives, leading to improvement in seven of eight representation categories in 2022 	<ul style="list-style-type: none"> Physical, emotional and financial wellness programs make for a happier and healthier workforce Parental and caretaker support benefits provide aid through life’s important events
	Women (Global)	Employees of Color (U.S. only)						
Management (Senior Vice President+)	35%	21%						
<table border="1"> <tbody> <tr> <td>Non-Management</td> <td>45%</td> <td>36%</td> </tr> </tbody> </table>	Non-Management	45%	36%		<ul style="list-style-type: none"> Additional special paid time off encourages work/ life balance – volunteer, disconnect, birthday and wellness days 			
Non-Management	45%	36%						
<table border="1"> <tbody> <tr> <td>Overall</td> <td>45%</td> <td>36%</td> </tr> </tbody> </table>	Overall	45%	36%		<ul style="list-style-type: none"> Enhancements to medical benefits mitigate rising healthcare costs for employees 			
Overall	45%	36%						
<u>Note:</u> Employee data as of December 31, 2022	<ul style="list-style-type: none"> Made tangible progress against our 10 Actions, including improvements in Black and Latinx representation overall and a 2.6% point increase for Management-level employees 	<ul style="list-style-type: none"> Rollout of global education assistance policy supports employees in fulfilling their career goals 						
	<ul style="list-style-type: none"> Conducted an external Civil Rights audit to assess the impacts of our business products and services, with a report expected to be published in the first half of 2023 							
	<ul style="list-style-type: none"> Leveraged 24+ employee networks with 100+ chapters globally to facilitate courageous conversations and drive engagement 							