



# A Practical Guide to Diversity & Inclusion in the Legal Profession Version 3.0

Intellectual Property Owners  
Association

Diversity & Inclusion Committee

October 2021

# SECTION 201

Section 201 of this Practical Guide highlights the main issues affecting Diversity (or hiring) & Inclusion (or retention) in law firms and corporate legal departments.

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# Systemic Racism, Discrimination, and/or Implicit Bias

ARE AT THE CENTER OF MOST, IF NOT ALL,  
CONTRIBUTORS OF DIVERSITY & INCLUSION  
PROBLEMS IN THE LEGAL PROFESSION





# What is Systemic Racism?

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- Systemic racism, also known as institutional racism, is a term that refers to a form of racism that is embedded in the laws and regulations of a society or an organization. It manifests as discrimination in areas such as criminal justice, employment, housing, health care, education, and political representations.
- It also manifests as discrimination in the legal profession, whether in law firms, corporations, the justice system, and other relevant institutions.
- An understanding and acknowledgment that such systemic structures exist in our profession is fundamental to meaningful discussions about diversity.

Source: [https://en.wikipedia.org/wiki/Institutional\\_racism](https://en.wikipedia.org/wiki/Institutional_racism)





# Systemic Racism Manifests into Racial Discrimination & Racial Biases





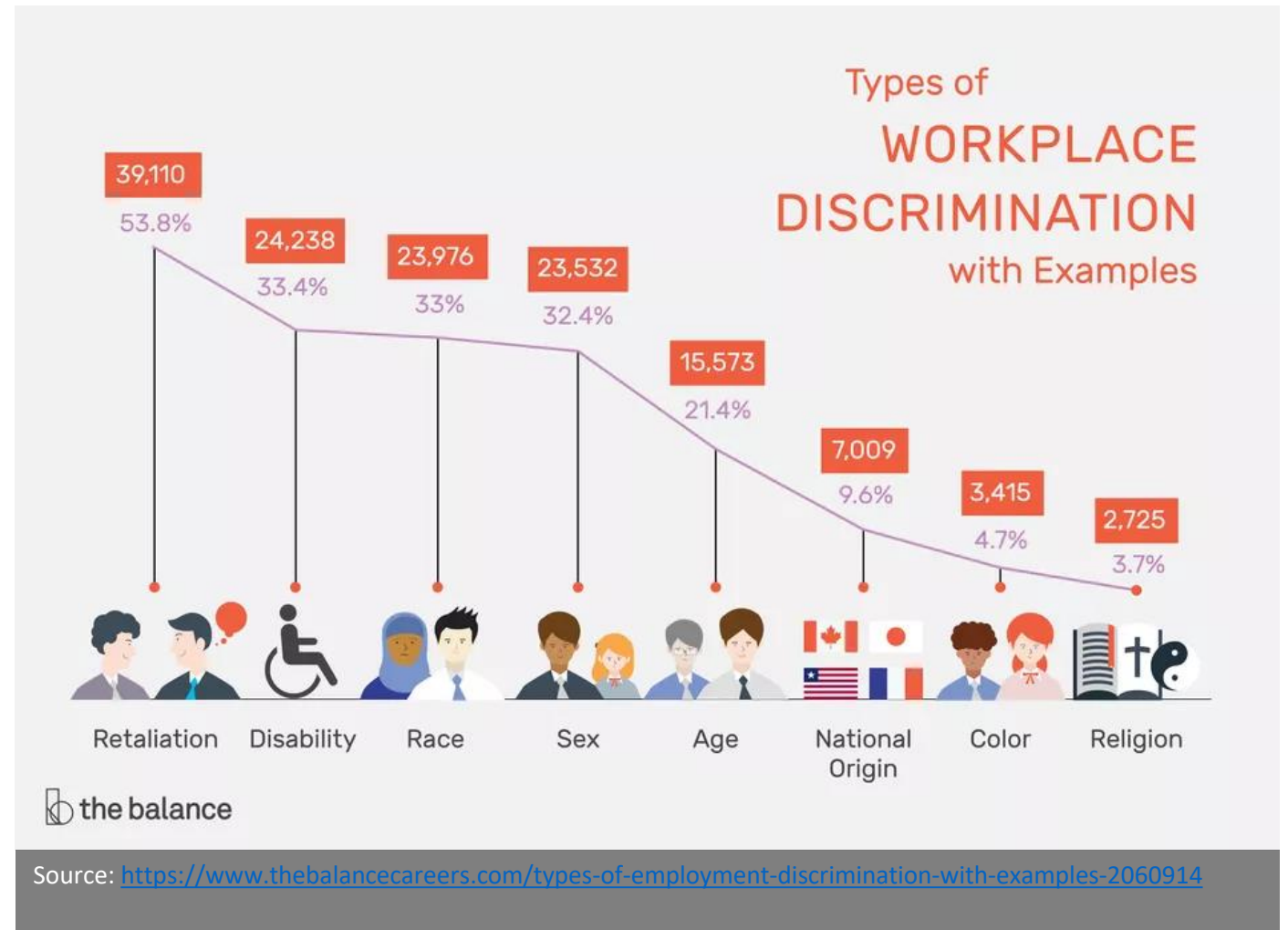
# What is Discrimination?

- To "discriminate" against someone means to treat that person differently, or less favorably, for some reason. Discrimination can occur while you are at school, at work, or in a public place, such as a mall or subway station. It can be either of an "overt" or "covert" nature
- The Equal Employment Opportunity Commission ("EEOC") is responsible for protecting you from one type of discrimination - employment discrimination because of your race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age (age 40 or older), or genetic information. Other laws may protect you from other types of discrimination, such as discrimination at school.

Source: [What is Employment Discrimination? | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](https://www.eeoc.gov/what-is-employment-discrimination/)

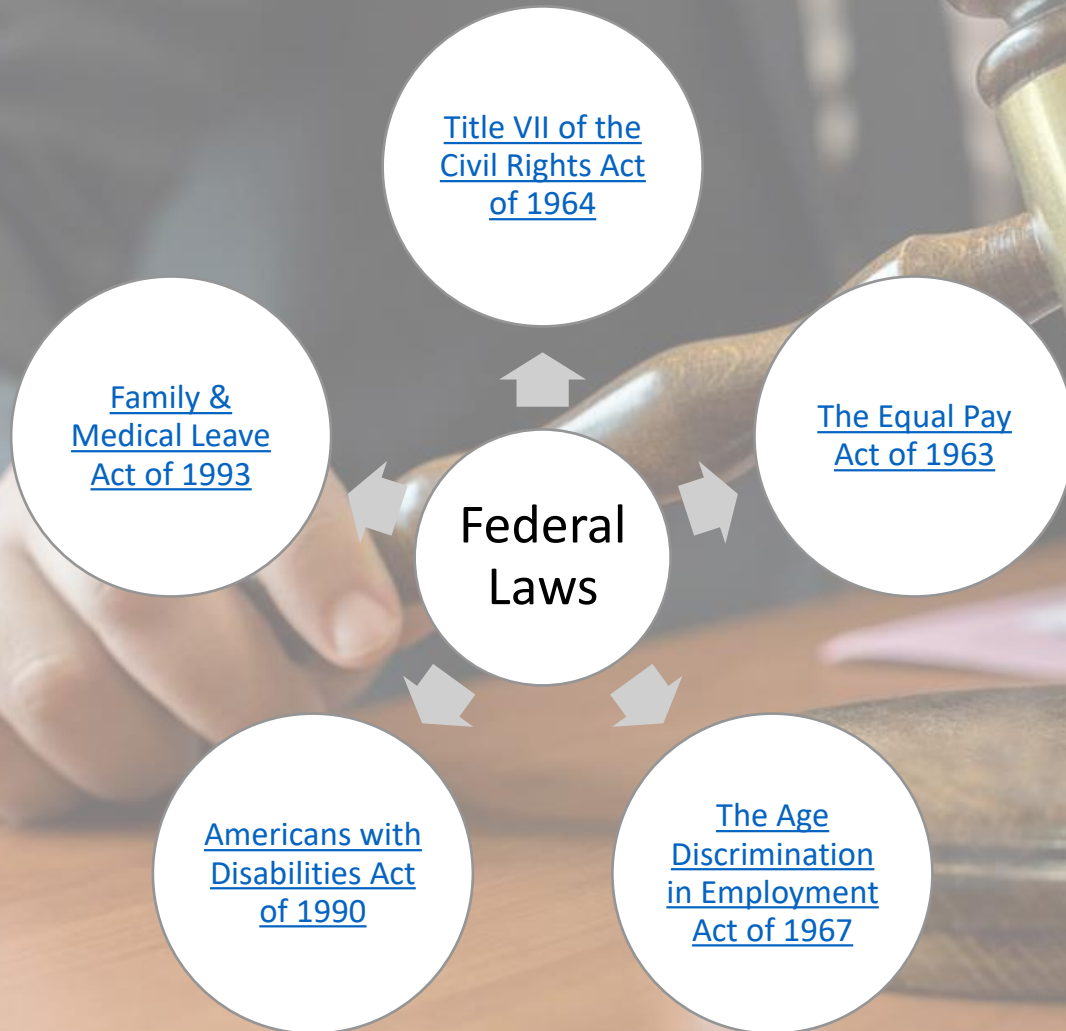
# What is Discrimination in the Workplace?

- Examples:
- Not promoting a racial minority employee because of her race.
- Underpaying a female employee differently for doing substantially similar work as her male colleague.
- Not hiring a qualified candidate who is in a wheelchair for a desk job.
- Firing an employee or demoting him/her because he/she took time off to care for and bond with his/her newly adopted child.





# Federal Laws Against Discrimination in the Workplace





# SOLUTIONS to Discrimination

Don't  
discriminate!!!

Educate and train  
yourself and your  
employees on a  
regular basis





# What is Implicit Bias?

- Bias is a prejudice in favor of or against one thing, person, or group compared with another usually in a way that's considered to be unfair. Biases may be held by an individual, group, or institution and can have negative or positive consequences.
- There are two main types of biases
  - Conscious bias (also known as explicit bias) and
  - Unconscious bias (also known as implicit bias)
- It is important to note that biases, conscious or unconscious, are not limited to ethnicity and race. Though racial bias and discrimination are well documented, biases may exist toward any social group. One's age, gender, gender identity, physical abilities, religion, sexual orientation, weight, and many other characteristics are subject to bias.
- Unconscious biases are social stereotypes about certain groups of people that individuals form outside their own conscious awareness. Everyone holds unconscious beliefs about various social and identity groups, and these biases stem from one's tendency to organize social worlds by categorizing.
- Unconscious bias is far more prevalent than conscious prejudice and often incompatible with one's conscious values. Certain scenarios can activate unconscious attitudes and beliefs. For example, biases may be more prevalent when multi-tasking or working under time pressure.
- Unconscious bias is frequently not captured by laws and regulations because it is of a more covert nature. Such discrimination persists because it is subtle.

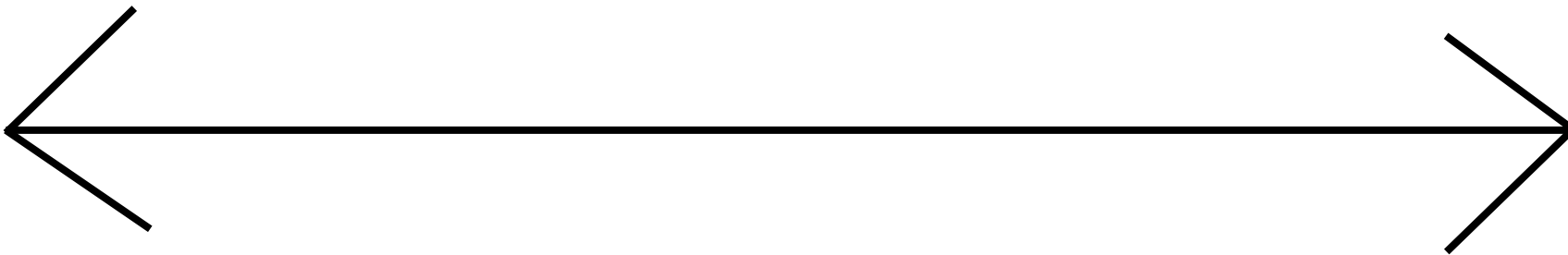


# What is **Implicit** Bias or **Unconscious** Bias?



**Causes us to perceive differences that do not exist.**

**Our brains perceive lines of different length even when they are the same.**





# Examples of Implicit Bias in the Legal Profession

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Entry-level hiring and callback interview criteria

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Disparities in pay between male and female attorneys

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Disparities in partnership promotion across race and gender

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Disparities in work assignments, professional development opportunities

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Inappropriate comments in the guise of jokes

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Indirect inappropriate comments

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Exclusion from social and professional meetings



# STRATEGIES to Address Implicit Bias


## Individual Strategies

- Promote self-awareness by recognizing your own biases.
- Understand the nature of your own biases to improve your approach to address your biases in a more informed and open way (Burgess, 2007).
- Seek out discussions with others (especially those from socially dissimilar groups). Sharing your biases can help others feel more secure about exploring their own biases. It's important to have these conversations in a safe space-individuals must be open to alternative perspectives and viewpoints.

## Institutional Strategies

- Develop concrete, objective indicators & outcomes for hiring, evaluation, and promotion to reduce standard stereotypes (Fiske & Taylor, 1991; Heilman, 2001; Bernat & Manis, 1994).
- Develop standardized criteria to assess the impact of individual contributions in performance evaluations (Heilman & Haynes, 2005).
- Develop and utilize structured interviews and develop objective evaluation criteria for hiring (Martell & Guzzo, 1991; Heilman, 2001).
- Provide unconscious bias training workshops for all constituents.





# Low Numbers of Diverse Candidates in the Legal Profession Result From Two Root Causes



**Pipeline Issues**

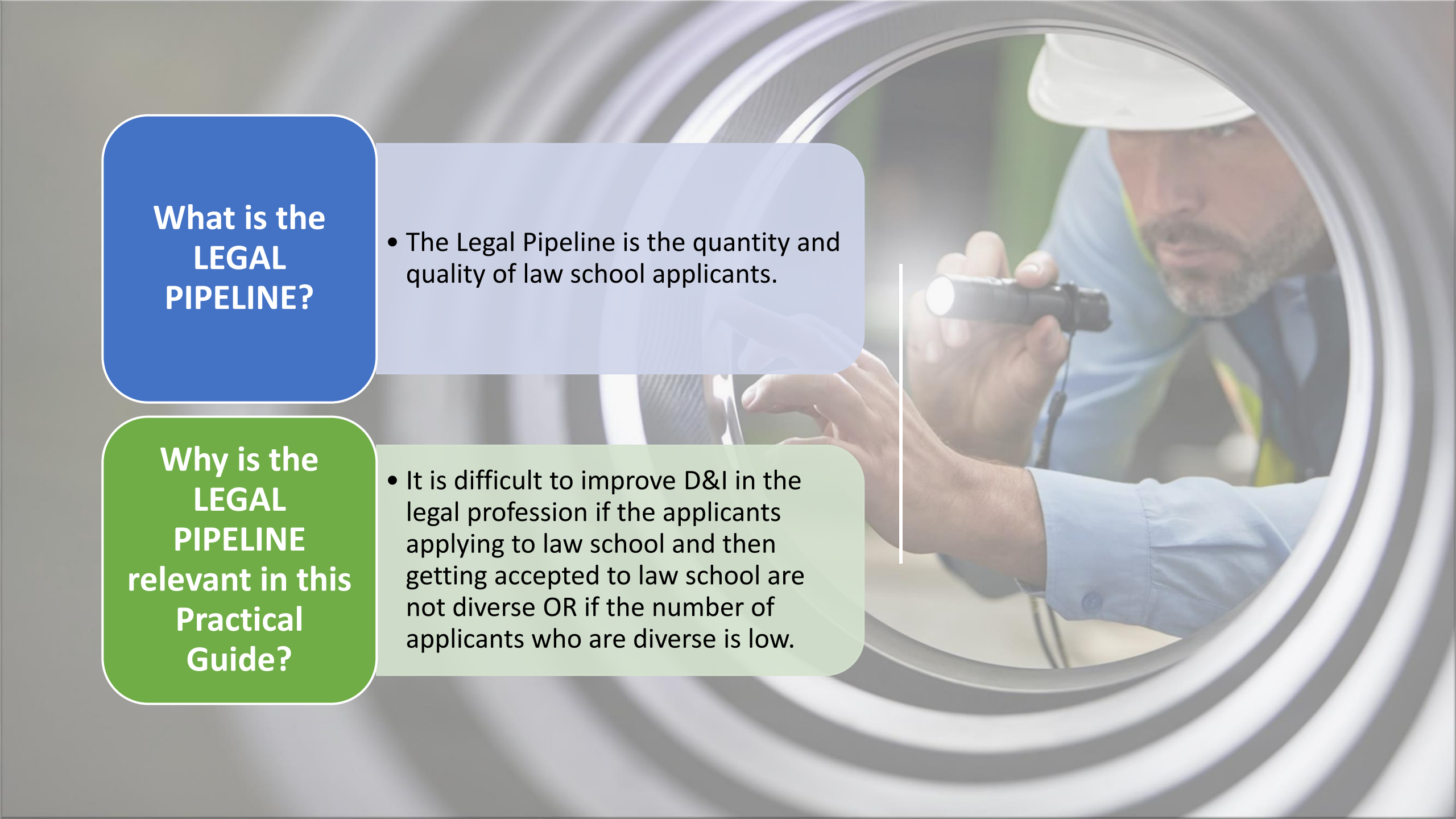


**Attrition After  
Starting First Legal  
Job**



# Pipeline Problems

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## What is the LEGAL PIPELINE?

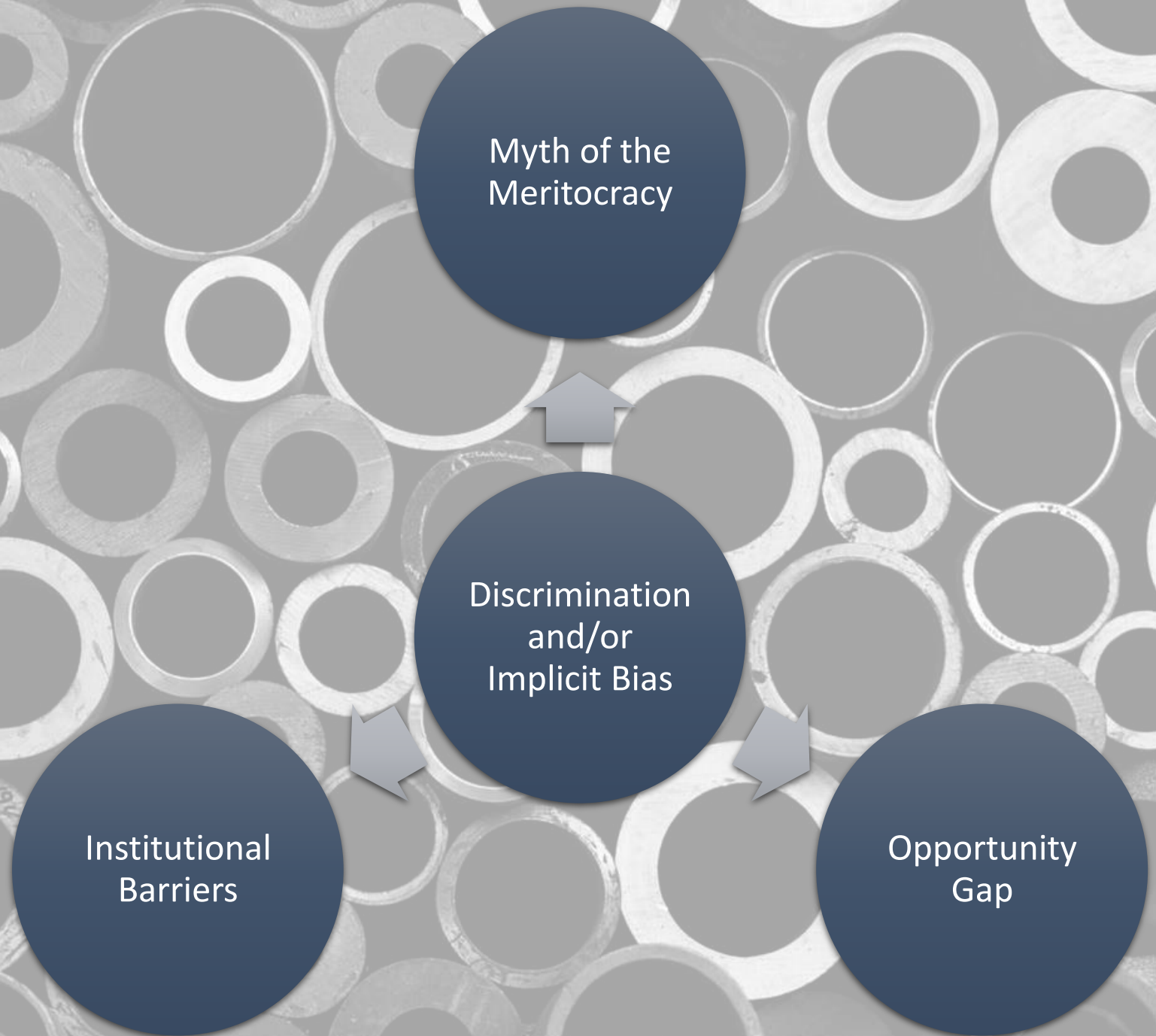
- The Legal Pipeline is the quantity and quality of law school applicants.

## Why is the LEGAL PIPELINE relevant in this Practical Guide?

- It is difficult to improve D&I in the legal profession if the applicants applying to law school and then getting accepted to law school are not diverse OR if the number of applicants who are diverse is low.



# Pipeline Contributors of D&I Problems







# Pipeline Problem – SCAPEGOAT!!

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- The “pipeline problem” is the theory that diversity initiatives are failing because there simply *aren’t* enough skilled members of underrepresented groups—women, people of color, LGBTQ+ folks, disabled talent, veterans—*out there*. In other words, an inability to diversify is *not* a failure of a company’s culture or its hiring process; it’s a failure on the part of women and underrepresented groups to achieve the appropriate skills for those open roles.
- This argument is ultimately a scapegoat.

Source: [Diversity Isn't a "Pipeline Problem"; It's a Process Problem | Gem](#)

See also [Five Reasons Why The Pipeline Problem Is Just A Myth \(forbes.com\)](#) for information on the “pipeline problem” being a myth.



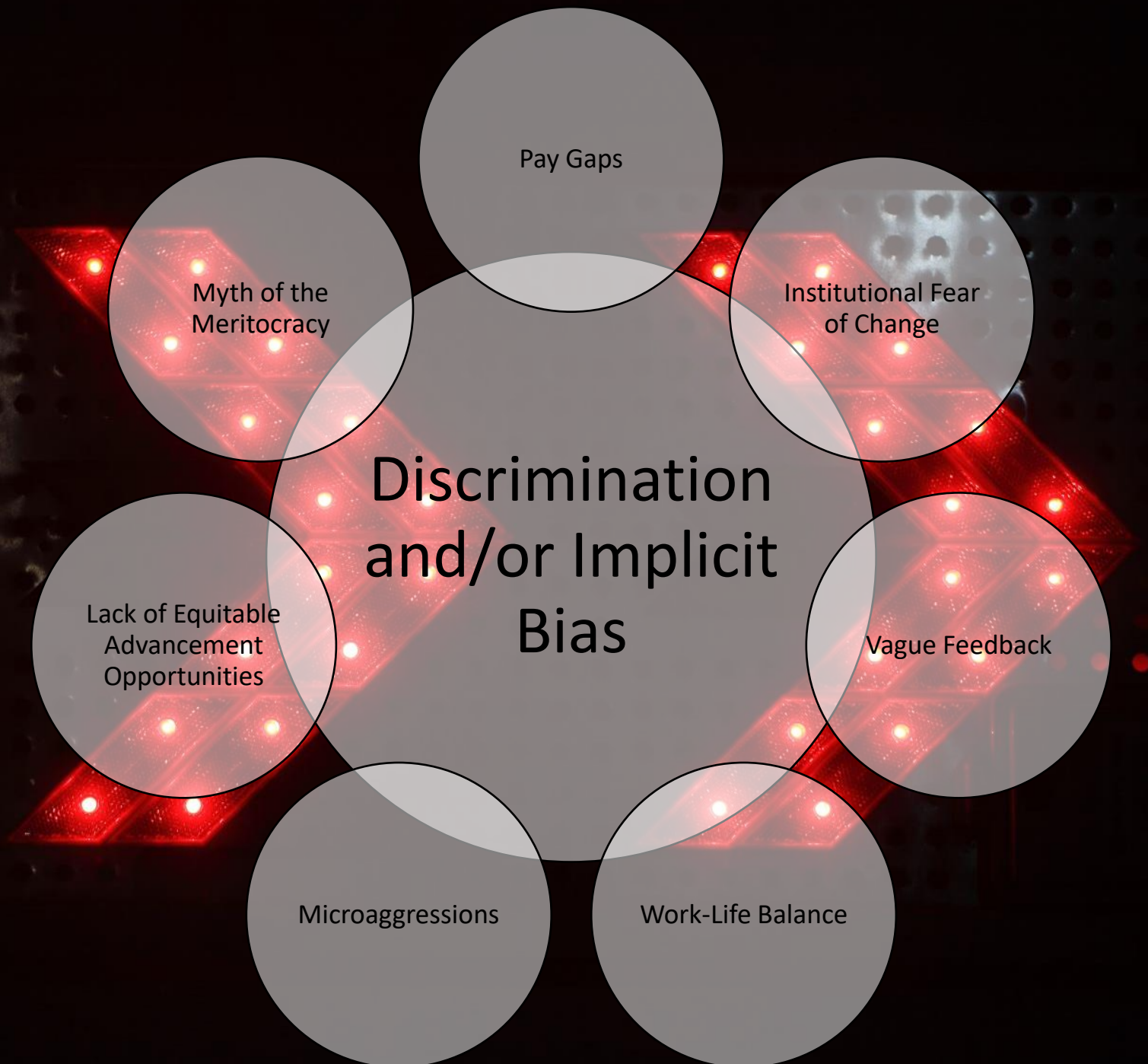
Pipeline Problems will be discussed  
separately and in detail in the  
**Advanced Placement** Section of the  
Practical Guide

# Attrition After First Legal Job

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**WHY do  
diverse lawyers  
leave law firms,  
corporate legal  
departments,  
and/or the  
legal  
profession?**



# Pay Gaps



# What are Pay Gaps?



Source:

[Racial and Gender Pay Gap Statistics for 2021 \(payscale.com\)](https://payscale.com)

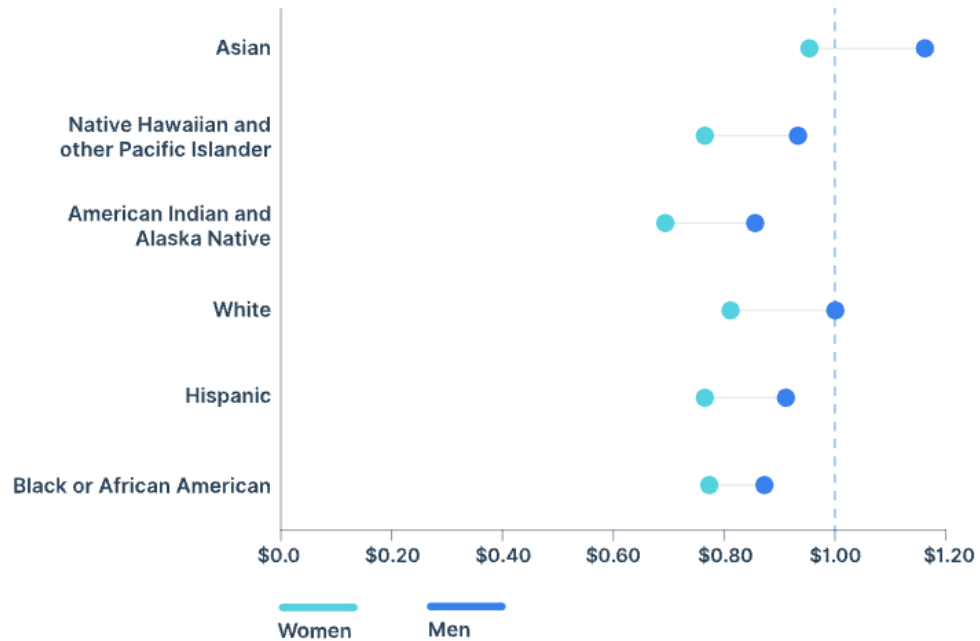
More Info: [Gender Pay Gaps White Paper](#)



# What are Pay Gaps?

## The Racial Wage Gap

### Uncontrolled



### Controlled



Source:

[Racial and Gender Pay Gap Statistics for 2021 \(payscale.com\)](https://payscale.com/racial-and-gender-pay-gap-statistics-for-2021)



# SOLUTIONS to Pay Gaps



**Standardize**  
compensation



**Be**  
objective



**Audit**  
all compensation on a  
periodic basis

# Institutional Fear of Change

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# What is Institutional Fear of Change?

© Randy Glasbergen  
glasbergen.com



**"I want you to find a bold and innovative way  
to do everything exactly the same way  
it's been done for 25 years!"**

# SOLUTIONS to Institutional Fear of Change



1. Put change agents and thought leaders in positions of power



2. Review policies and procedures in place for a long time



3. Question all policies and procedures – especially the old ones and even the non-controversial ones



4. Set goals and a timeline to enact policies and procedures that are inclusive, equitable, clear, objective, and efficient



5. Eliminate policies and procedures that are exclusive, non-equitable, vague, subjective, or inefficient



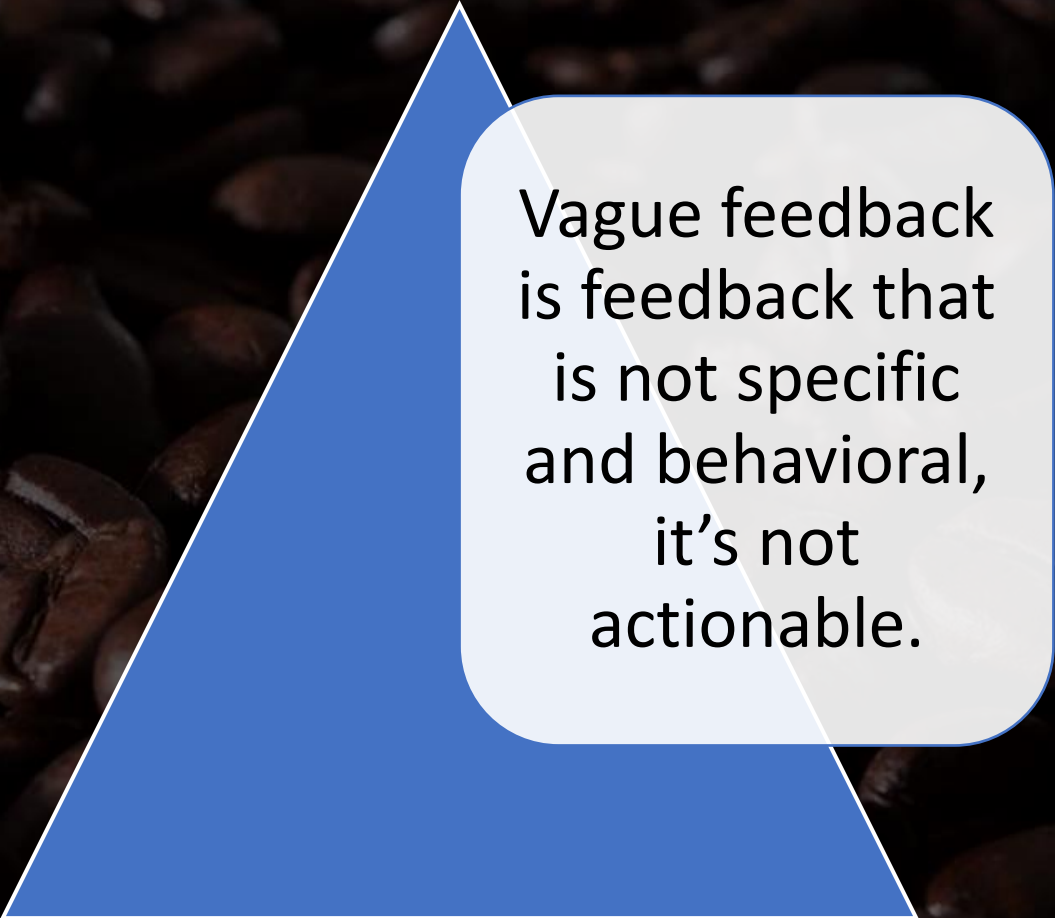
6. Repeat steps 2-5 on a periodic basis for policies and procedures affecting hiring, retention, advancement, or compensation

# Vague Feedback





# Vague Feedback



Vague feedback  
is feedback that  
is not specific  
and behavioral,  
it's not  
actionable.

# Consequences of Vague Feedback

Vague feedback stresses and frustrates the receiver. If there's no idea how to change or improve, the receiver perceives they have no chance at creating success.

Vague feedback derails progress – both for the employee and the organization. Given the ambiguity surrounding how to make it right, the receiver's natural inclination is to stop and run in place until it becomes clear what to do.

Vague feedback creates communication and relationship strain. Everyone feels they have a point and the parties grow frustrated with each other based on the disagreement.

Vague feedback poisons the working environment. The factors that create a healthy working environment, especially trust, are easily damaged in the face of vague feedback. It turns good attitudes sour and derails collaboration and creativity. It also ensures promotions based on non-performance factors, like “commonality.”

# SOLUTIONS to Vague Feedback



## Suggestions for Evaluators:

- DO:
  - Rely only on facts and goals that are directly related to the job.
  - Outline specific criteria being relied upon to evaluate individuals.
  - Articulate specific results or behaviors that would demonstrate mastery of their job.
  - Use the same criteria for all employees at the same level.
  - Feedback should be used as a tool to improve employee performance and to advance organization objectives.
- DO NOT:
  - Do not rely on feelings, generalizations, or stereotypes.
  - Do not pin your personal likes or dislikes of an employee in providing any feedback.
  - Do not alter achievement criteria from employee to employee based on personal likes or dislikes or based on systemic discrimination.
  - Do not use feedback as a means to assert superiority or control over employees.

## Suggestions for those being Evaluated:

- Ask for specific examples when given vague feedback. To avoid sounding defensive, offer something along the lines of “I really want to understand your feedback because I value it. Can you please provide some examples?”



# Work-Life Balance



# What is Work-Life Balance?

A constantly evolving state of professional and personal well-being in which the personal life of a legal professional is not suffering at the cost of her career.



# STRATEGIES to Improve Work-Life Balance

## At Work

- Set manageable goals each day.
- Be efficient with your time at work.
- Ask for flexibility.
- Take five.
- Listen to your favorite music.
- Communicate effectively.
- Give yourself a break.

## At Home

- Unplug.
- Divide and conquer.
- Don't over commit.
- Get support.
- Take advantage of your company's Employee Assistance Program.
- Stay active.
- Treat your body right.
- Get help if you need it.





# Microaggressions

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# Microaggressions

## – What are they?

Microaggression is a term used for commonplace daily verbal, behavioral or environmental slights, whether intentional or unintentional, that communicate hostile, derogatory, or negative attitudes toward stigmatized or culturally marginalized groups.

Source: <https://en.wikipedia.org/wiki/Microaggression>



# Microaggressions – but he didn't mean it...

- Microaggressions can be racist (or sexist or more) regardless of the intent of the perpetrator.
- Microaggressions originate from those who firmly believe they are not racist or sexist (or more).

Source: [What Is A Microaggression? And What To Do If You Experience One. : Life Kit : NPR](#)



# Examples of Microaggressions

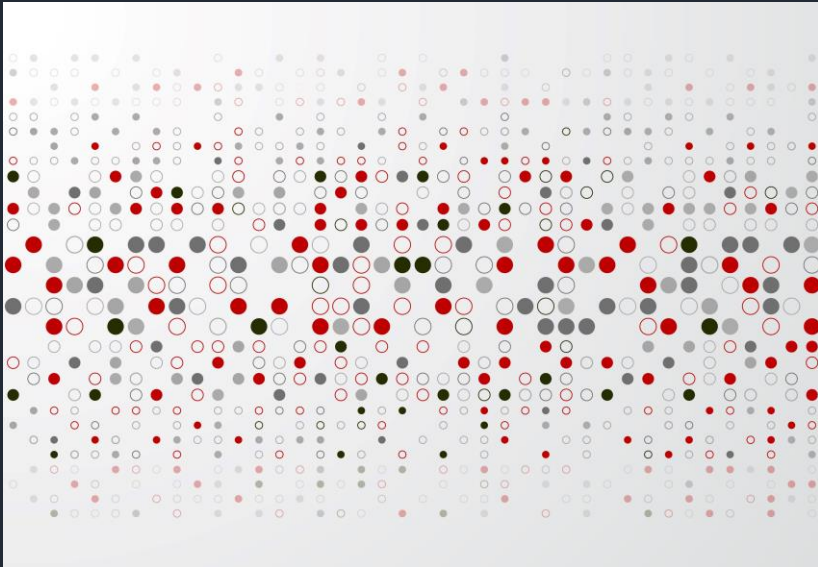
- “You’re a patent attorney?!”
- Excluding one team member and recognizing other team members for a team accomplishment
- “You’re too confident.”
- “You don’t have an accent!”
- “You have a great tan!”





# SOLUTIONS to Microaggressions

Be	Mindful
Stop	underhanded “compliments”
Take	effort to get to know people rather than base any comments or opinions based on appearances



## Microaggressions – Points to Remember

The receiver of microaggressions is not being oversensitive

It is not the job of the microaggressions recipient to teach you how and why your words / actions are problematic

To the microaggressions repeat offenders – think before you speak and if in doubt don't say it

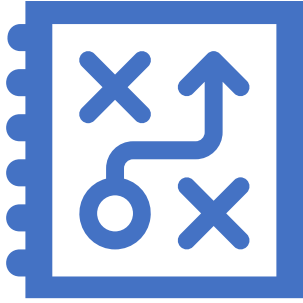
To the microaggressions repeat recipients – it is your duty to speak out not only for yourself but for others who will be in your shoes in the future



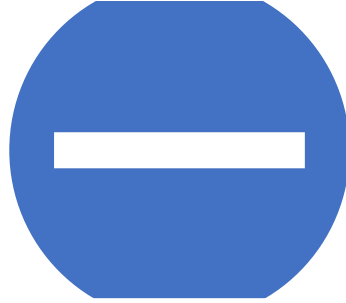
# Lack of Equitable Advancement Opportunities



# Lack of Equitable Advancement Opportunities – How Can I Spot Them?



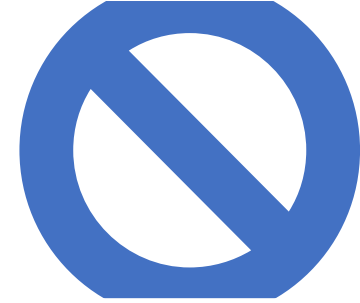
Employees have no idea if they have a future in the organization.



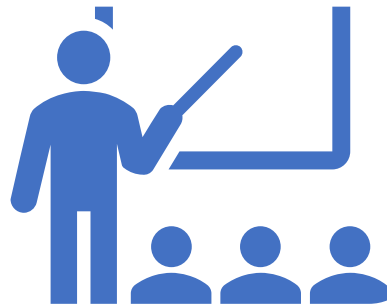
Every open position is not opened up to all qualified applicants to apply.



The hiring or promotion criteria are non-existent, vague, or changing over time or by candidate.



No career plans are discussed as a matter of routine business on a regular basis.



No formal or informal mentoring or sponsoring opportunities.



No transparent policies on compensation systems.

# SOLUTIONS to Lack of Equitable Advancement Opportunities

Provide “action oriented” feedback to employees.

Reduce unconscious bias in reviews through defined expectations and goals for each position, use of performance checklists, etc.

Beware the myth of the “meritocracy”!

Discuss short-term and long-term career goals on a regular basis.

Open every position to all qualified applicants.

Make all hiring and promotion criteria clear and consistent.

Offer mentoring or sponsoring opportunities.

Provide transparent policies on compensation systems.



# Myth of the Meritocracy





# What is the Myth of the Meritocracy?

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In a “meritocracy,” women and minorities have to work harder and obtain higher performance scores to receive the same compensation as white men.

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The more objective a person believes they are, the more bias impacts their decisions.

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The myth of the meritocracy perpetuates the success of “structurally advantaged” or “privileged” groups against “structurally disadvantaged” groups.



# Solutions to the Myth of the Meritocracy

Understand that “meritocracy” is a myth.

As a result of unconscious bias, which is a part of every human being’s decision-making process, it is NOT possible to offer a purely merit-based system.

- For example, if your unconscious bias leads you to believe that women are less qualified than men, even if the work-product from a woman is the EXACT same as that from a man, you will believe that the man did a better job and reward him as such. This is not a meritocracy!

Proceed under the principle that any hiring, promoting, or compensating systems will be marred by biases and that a merit-based system does NOT exist.



# Section 201 Summary



Go to the  
**Advanced Placement**  
Section of the  
Practical Guide  
Version 3.0

A close-up, macro photograph of several dark brown, roasted coffee beans. The beans are scattered across the frame, with some in sharp focus in the foreground and others blurred in the background, creating a sense of depth. The lighting is soft, highlighting the texture and creases of the beans.

# ACKNOWLEDGEMENTS

## **IPO's Diversity & Inclusion Committee**

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