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How the U.S. Supreme Court's Decision Against Affirmative Action May Affect Employer DEI Policies

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In a recent decision, the United States Supreme Court held that the use of race in university and college admissions is unconstitutional.
Fair Admissions, Inc. v. President and Fellows of Harvard College, No. 20-1199 (U.S. 2023).

The Court's ruling is not directly applicable to private sector employers, nor does it change the law with respect to employment discrimination.

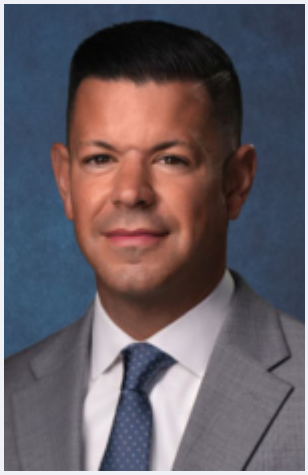
Nevertheless, employers should expect the Court's reasoning to be used to challenge employer Diversity, Equity, and Inclusion (DEI) initiatives and hiring practices. On July 13, 2023, just one week after the Supreme Court's decision, a group of thirteen state attorneys general sent a letter to large companies warning them against the use of racial preference in hiring and promotion decisions:
https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2023/pr23-27-letter.pdf

If your Company has a DEI policy or similar initiatives, it is strongly recommended that you:

- Review your policy to ensure that it is focused on lawful, non-discriminatory efforts to expand diversity of qualified candidates for hiring and promotions.
- Review all internal and public communications regarding your policies to ensure that no statements are made which could be characterized as discriminatory or unlawful.
- Confirm your policy contains a clear objective of inclusion for all, regardless of sex, gender, race or any other protected class status.
- Avoid DEI measures which are, or could be construed to be, focused on the recruitment and/or advancement of a particular group.

Taking these steps now can help protect your Company from a potential discrimination claim based on your DEI policy in the future.

Please contact Knox Law's Labor and Employment group if you would like to discuss or review your DEI policy.



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