



# The National Federation of Paralegal Associations, Inc. Position Statement on Diversity, Equity, and Inclusion

The National Federation of Paralegal Associations, Inc. (NFPA) believes that a diverse group of paralegals is critically important to the success of the legal profession. Diversity is an inclusive concept and encompasses, without limitation, race, color, culture, ethnicity, age, gender, sexual orientation, gender identity and expression, religion, nationality or national origin, any disability or differently abled status, military or veteran status, social or economic status, physical characteristics, health status, justice and adjudication status, or marital or parental status. Valuing diversity means appreciating the many advantages that different people contribute to the richness of our culture. It means behaving in a way that fosters respect for individual differences and the treatment of each person based on his, her, or their own merit. NFPA has adopted and supports the following diversity statement:

*One of the greatest resources of the paralegal profession is the racial, ethnic, cultural, religious, national origin, indigenous heritage, marital or parental status, socio-economic status, disability or differently abled status, military service or veteran status, sexual orientation or identity, age, gender, residency status, physical characteristics, health status, neurodiversity status, justice and adjudication status, and social diversity of its members. The National Federation of Paralegal Associations, Inc. ("NFPA") takes great pride in this diversity. NFPA welcomes, respects, promotes and supports diversity, equity, and inclusion in all aspects of its membership, in its vendors and contractors, and with paralegal educators, paralegal students, the paralegal profession, the legal profession, bar associations, and the courts.*

## **BACKGROUND**

Over the past few years, many law firms and corporations have devoted increasing resources to diversity, equity, and inclusion initiatives, as well as to the management and administration of these efforts. Americans are increasingly more diverse than in the past, and the U.S. is projected to continue to grow to be more diverse in the future. The society we live, work, and do business in is a richly woven tapestry of diverse people, which continues to grow more diverse by the year. According to data from the U.S. Census Bureau, our nation will no longer have any single ethnic or racial majority by the year 2050.

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This change began slowly due to major historical events which have drastically reshaped the United States over time. Women joined the workforce during wartime. The abolition of slavery and the promulgation of civil rights laws supported people of color in joining the workforce and earning a stronger voice in the process. Legislation enacted and civil rights movements in recent years have led to greater rights for those with disabilities as well as lesbian, bisexual, gay, and transgender individuals.

The following are major points in history that dramatically increased diversity in the workplace:

1. President Abraham Lincoln's Emancipation Proclamation in 1863 declaring the freedom of slaves and the 13th Amendment that followed in 1865 outlawing slavery.
2. In 1913, Henry Ford offered \$5 a day (twice the typical daily wage) to attract immigrants and African Americans. By 1916, Ford's employees represented 62 nationalities and employed over 900 persons with disabilities.
3. Women joined the workforce in great numbers in 1917 during World War I.
4. The Women's Bureau of the Department of Labor was formed in 1920.
5. President Harry S. Truman integrated the military in 1948.
6. In 1961, President John F. Kennedy improved hiring practices for women and established maternity leave.
7. President Lyndon B. Johnson enactment of the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

There currently exist laws that protect against discrimination, including equal opportunity laws to promote diversity. However, these laws do not guarantee equality or inclusion in the workplace. Some of the most significant acts and decisions protecting individuals from discrimination include:

1. The Equal Pay Act of 1963 which prohibits sex discrimination and enforces equal wages for women and men performing equal work in the same establishment.
2. Title VII of the Civil Rights Act of 1964 which prohibits employment discrimination based on race, color, age, religion, sex, and national origin.
3. The Age Discrimination in Employment Act of 1967 which protects applicants and employees 40 years of age or older from discrimination on the basis of age.
4. Title IX of the Education Amendments of 1972 which prohibits discrimination on the basis of sex in any federally funded education program or activity.

5. The Rehabilitation Act of 1973 which authorizes a nationwide service system to assist persons with disabilities to attain employment, independent living, and an improved quality of life.
6. The nondiscrimination and affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, covers employers with federal contracts or subcontracts that meet the threshold amount specified in the statute, placing on employers the obligation to refrain from discrimination in employment against protected veterans.
7. The Pregnancy Discrimination Act of 1978 which prohibit sex discrimination on the basis of pregnancy (amendment to Title VII of the Civil Rights Act of 1964).
8. The Americans with Disabilities Act of 1990 which protects applicants and employees with disabilities from discrimination in many aspects of employment on the basis of disability, and also requires that employers provide applicants and employees with disabilities with reasonable accommodations in the workplace.
9. The Civil Rights Act of 1991 which provided the right to trial by jury on discrimination claims, introduced the possibility of emotional distress damages, and limited the amount that a jury could award (amendment to the Civil Rights Act of 1964).
10. The Genetic Information Nondiscrimination Act of 2008 which makes it illegal to discriminate against employees or applicants because of genetic information (information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder or condition of an individual's family members).
11. The Lily Ledbetter Fair Pay Act of 2009 which allows employees to challenge employer decisions about base pay or wages, job classifications, career ladder or other noncompetitive promotion denials, tenure denials, and failure to respond to requests for raises.
12. In August 2011, President Barack Obama signed Executive Order 13583 "[e]stablishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce." The executive order, in part, promotes equal employment opportunity, diversity, and inclusion in the federal workforce. The order sought to identify strategies to remove barriers to equal opportunity in federal government recruitment, hiring, promotion, retention, professional development, and training.
13. In 2015, the U.S. Supreme Court held that same-sex marriage is legal in all 50 states. See *Obergefell v. Hodges* case referenced below.

14. In 2016, the U.S. Supreme Court upheld the consideration of race and ethnicity in college admissions. See *Fisher v. University of Texas at Austin* case referenced below.
15. In 2020, the U.S. Supreme Court held that the protection under Title VII of the Civil Rights Act of 1964 that bars discrimination based on sex is applicable to and protects LGBTQIA2S+ workers. See *Bostock v. Clayton County, Georgia* case referenced below.
16. In 2020, the U.S. Supreme Court blocked the attempt to end Deferred Action for Childhood Arrivals, a program that protects about 7000,000 immigrants brought to the United States as children from deportation. See *Department of Homeland Security et al. v. Regents of California et al.* referenced below.
17. In 2021, President Joseph Biden established Juneteenth as a federal holiday, the first new federal holiday since the establishment of Martin Luther King, Jr. Day in 1983. Juneteenth commemorates the emancipation of the last enslaved African Americans. Although the Emancipation Proclamation abolished slavery on January 1, 1863, it took over two-and-a-half years, until June 19, 1865, for the news to travel to southwest Texas, the last region in the country to practice slavery. Juneteenth honors African American freedom with an emphasis on education and achievement.
18. In 2021, President Joseph Biden signed into law the COVID-19 Hate Crimes Act in response to the rise in violence against Asian Americans during the coronavirus pandemic. It directs the Justice Department to assist with expedited review of COVID-19 hate crimes, provide guidance for state and local law enforcement agencies to establish online reporting of hate crimes in multiple languages, expand "linguistically appropriate" public education campaigns, and issue guidance on best practices to curb racially discriminatory language in describing the pandemic.
19. In 2022, the U.S. House of Representatives passed the CROWN (Creating a Respectful and Open World for Natural Hair) Act which would ban race-based hair discrimination at work, in federal programs, and on public accommodations. The bill was sent to the U.S. Senate for consideration. If the Crown Act becomes law, natural hair discrimination would be treated as if it were race or national origin discrimination under federal civil rights law. To date, 15 states and more than 40 municipalities have enacted their versions of the CROWN Act.

Indeed, according to the U.S. Supreme Court nearly 20 years ago, the benefits of understanding cultural diversity "are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints." *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003).

Analogously, in its landmark decision on marriage equality, the Supreme Court addressed issues of inclusion and equity. See *Obergefell v. Hodges*, 576 U.S. 644, 647 (2015), "[t]he right to marry

is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty."

In a seminal case addressing diversity and inclusion, the Supreme Court upheld the University of Texas at Austin's consideration of race and ethnicity in college admissions. "The record here reveals that the university articulated concrete and precise goals -- e.g., ending stereotypes, promoting 'cross-racial understanding,' preparing students for 'an increasingly diverse workforce and society,' and cultivating leaders with 'legitimacy in the eyes of the citizenry' -- that mirror the compelling interest this court has approved in prior cases." See *Fisher v. University of Texas at Austin*, 579 U.S. 365, 367 (2016).

In another landmark decision addressing inclusion and equity, the Supreme Court extended federal civil rights law to LGBTQIA2S+ workers through its determination that the language of Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination, applies to discrimination based on sexual orientation and gender identity. See *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020) (consolidated with No. 17-1623, *Altitude Express Inc. v. Zarda et al., as Co-Independent Executors of the Estate of Zarda*, and No. 18-107, *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission et al.*). "An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."

In an important immigration decision, the Supreme Court entered a provisional decision based on procedural issues related to the Deferred Action for Childhood Arrivals (DACA) program. The DACA program was established in 2012 and allowed individuals who arrived in the United States as children without proper identification or who overstayed their visas as children to be deferred from any removal proceedings. Additionally, the DACA program allowed these individuals to lawfully work in the United States. See *Department of Homeland Security et al. v. Regents of California et al.*, 140 S. Ct. 1891, 207 L. Ed. 2d 253 (2020).

In a decision related to collegiate athletics, the Supreme Court unanimously found that the National College Athletic Association (NCAA) rules blanketly prohibiting student-athletes from receiving certain types of compensation violate federal antitrust laws. While the ruling did not address the question of non-academic compensation, it was a definitive anti-trust ruling in favor of student athletes, who often make tremendous profits for teams (and schools) in the NCAA. "Nowhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate. . . . The NCAA is not above the law." See *National College Athletic Association v. Alston*, 141 S. Ct. 2141, 2166-2168 (2021).

In one of the most notable cases of the 20th century, the Supreme Court rendered a decision in *Roe v. Wade*, 410 U.S. 113 (1973) making abortion legal in the United States, which was primarily upheld in a subsequent decision, *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). In 2018, Mississippi passed a law banning abortion at 15 weeks of pregnancy. Based on the precedent set by *Roe* and affirmed by *Casey*, the law was immediately challenged by providers at Jackson

Women's Health Organization, the sole remaining abortion clinic in Mississippi. A federal district court blocked the law, a decision later affirmed by the Fifth Circuit Court of Appeals. In June 2020, Mississippi sought review by the Supreme Court. Oral argument was held in December 2021. In another landmark decision regarding reproductive rights, in June 2022, the Supreme Court overturned *Roe* and *Casey*. This ruling discarded nearly fifty years of settled constitutional law precedent. The Court held that "[T]he Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision." This leaves the question of who can obtain an abortion to each individual state or the action of Congress. About half of the states are expected to allow abortion bans or other limits on the procedure to take effect. See *Dobbs v. Jackson Women's Health*, No. 19-1392, 2022 WL 2276808, 2022 U.S. LEXIS 3057 (U.S. Jun. 24, 2022).

Demographic changes in our society and an increasingly global economy fuel the need for a greater understanding of cultural diversity, inclusion, and equity. Consider these national trends:

- In 2019, 72.4 percent of women between the ages of 25 and 64 were participating in the work force.
- In 2020, two-fifths of Americans identified as people of color with 33.8 million people identifying as multi-racial.
- From 2000 to 2019, the Asian American population in the U.S. increased by 81 percent, reaching over 24 million in 2020.
- Afro Latin/Chicano/Latin/Indigenous people accounted for 70 percent of the total U.S. population growth from 2000 to 2019, reaching over 62.1 million in 2021. In 2021, they were the second-largest racial or ethnic group behind whites.
- From 2000-2019, the Black/African American population increased by 20 percent. In 2020, the Black/African American population was 46.9 million, over 90 percent of whom are the descendants of persons enslaved in the U.S., the Caribbean, and South America.
- In 2020, about 61 million adults and 3 million children were living with a disability.
- In 2020, more than 5.6 million Americans were in prison, jail, or under probation or parole, a 13.3 percent decrease from 2019.
- In 2021, about 42 percent of Americans (nearly 94 million) ages 25 and over had a college degree of some type.
- By 2024, Millennials and Generation Z will comprise nearly 45 percent of all eligible voters.
- By 2030, the number of people of color in the work force will be 53 percent.

- By 2030, the number of people 75 and older in the work force is expected to grow by 96.5 percent.
- By 2050, 54 percent of the U.S. population will be racially or ethnically diverse.

In the United States (the country with the third largest population in the world after China and India), systems of power grant privilege and access unequally such that inequity and injustice is a result and must be continuously addressed and changed. Equity is interrelated with diversity and inclusion. Equity is defined as the fair treatment, access, opportunity, and advancement for all people, while at the same time striving to identify and eliminate barriers that have prevented the full participation of some groups. To have equitable systems, all people should be treated fairly, unhampered by artificial barriers, stereotypes or prejudices (The Blackwell Encyclopedia of Management, C.L. Cooper, 2016).

Equity and equality are two strategies to be used in an effort to produce fairness. Equity means providing everyone with the tools to be successful and is closely tied to actions and results.

Equitable consciousness relates to the mitigation of bullying and harassment as a barrier to inclusion. This comprises intentionally hurtful actions; aggressive behavior that involves unwanted and negative actions; intimidation and persecution; a pattern of behavior repeated over time; and an imbalance of power or strength. Equitable consciousness involves ongoing self-reflection and growth. The lack of consciousness related to bullying and harassment denotes conceivable malfeasance and potential ethical violations.

Finally, the disciplinary rules that regulate the practice of law, in many instances, require lawyers to understand and embrace diversity in a multicultural society. See American Bar Association (ABA) Model Rule 8.4(g) which states that it is professional misconduct for a lawyer to "engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law..."

A lawyer who both fails to recognize cultural diversity, and to incorporate this understanding into his, her, or their practice, risks discipline. Paralegals are expected to adhere to the same ethical standards as lawyers. The failure to incorporate this understanding risks placing an attorney, law firm, or corporate legal department at risk for disciplinary action.

## **CONCLUSION**

When examining diversity, the focus should include common traits as well as wider societal and cultural differences. While the concept of culture can be broad or narrow, it is important to note that it changes over time. Working in a diverse and inclusive society requires being responsive to these changes. This is an evolutionary process which is not about different standards but rather, an opportunity to increase diversity, foster equity, and embrace inclusion. When individuals with unique and disparate talents, outlooks, and ideas are met with respect and embraced as part of a community, ingenuity thrives.

Prepared for the National Federation of Paralegal Associations, Inc. by the Diversity, Equity, and Inclusion Committee. The Position Statement was unanimously approved by the delegates at the Seattle Convention in October 2018 and is updated every two (2) years. It was previously updated in 2020, and subsequently revised in 2021 solely to reflect the Committee's name change.

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