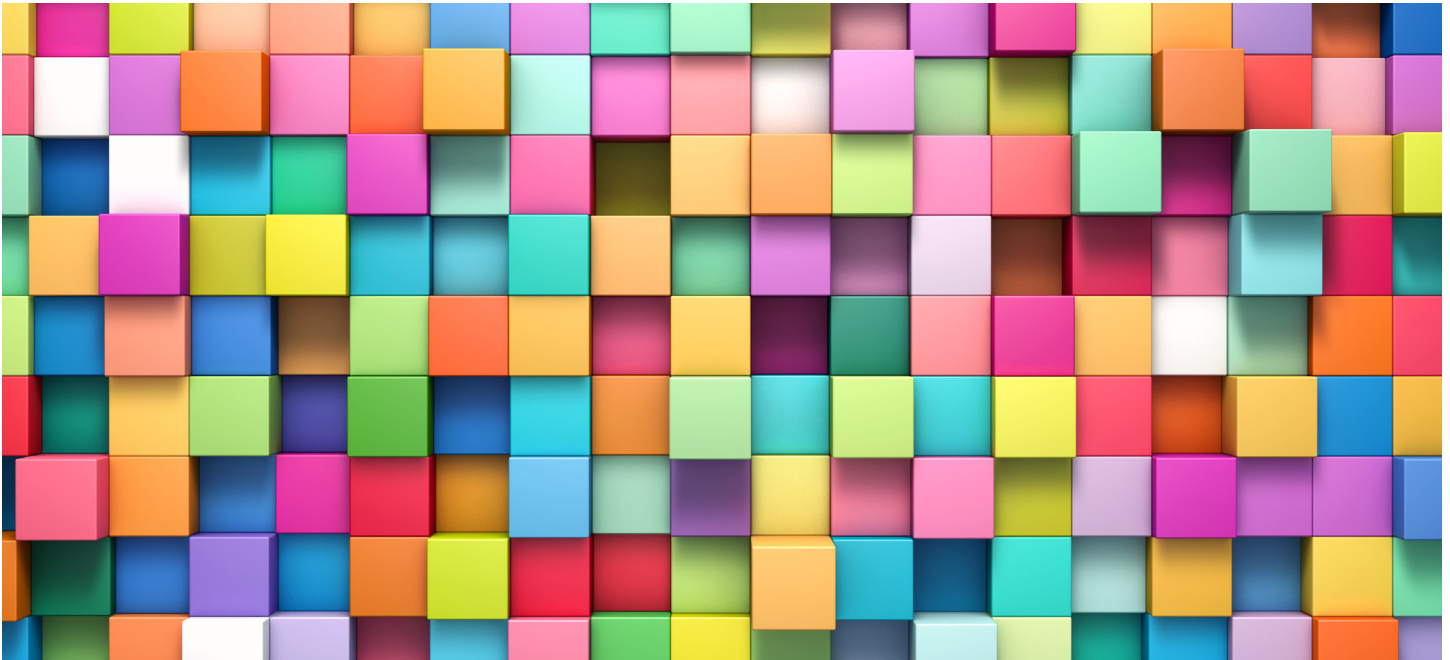


# HR & BENEFITS UPDATE

Q2 2017



## Gender Parity and Inclusion Build Innovation

By: Kim Davis, EVP and CHRO, NFP

### HUMAN RESOURCES

Does your company foster a culture of acceptance and a sense of belonging for all people? In today's environment, candidates and employees aren't just looking for ping pong tables and concierge services; they're looking for a work environment that recruits and retains employees and leaders who welcome diverse thought and actively manage processes to ensure they permeate the environment. Having a diverse culture isn't enough. According to an article in *Harvard Business Review* titled "Diversity Doesn't Stick Without Inclusion": "Part of the problem is that 'diversity' and 'inclusion' are so often lumped together that they're assumed to be the same thing. But that's just not the case." In the context of the workplace, diversity equals representation by the numbers of men and women, age groups from millennials to baby boomers, Caucasians and people of color, members of the LGBTQ community and those with different religious beliefs. "Without inclusion, however, the crucial connections that attract diverse talent, encourage their participation, foster innovation and lead to business growth won't happen. As noted diversity advocate Vernā Myers puts it, "Diversity is being invited to the party. Inclusion is being asked to dance."

### Moving from Diversity to Inclusivity

So how do you move from just having a diversity program to becoming an inclusive workplace? At the Center for Talent Innovation, research has uncovered four distinct practices that help to build an inclusive environment:

- Training leaders to be more inclusive
- Encouraging employees to be their authentic selves
- Implementing a senior-level sponsorship program for the underrepresented

- Creating clear career paths that provide opportunities for high-level assignments and job changes/promotions to everyone based on qualifications and not personal bias for the "person most like us"

As leaders, it's our responsibility to examine and challenge our own assumptions as well as those of the organizations we work for. We should push for a review of hiring practices, performance evaluations and promotion selection to ensure we actively work toward understanding our biases in connection with these workplace practices. Leaders' actions set the tone for how employees treat one another and how the workplace is perceived.

Use "lunch and learns" or local learning circles to enhance inclusion by bringing together small groups of employees to discuss their needs and their feelings around key policies within the workplace. When conversations about work expectations – virtual versus in-office work hours and expectations of being seen in the office versus getting the work done – differences can be discussed and biases of what it means to be productive and committed can be understood. Employees are encouraged to be their authentic selves when there's an environment of listening for understanding and acceptance of the different views and needs each of us have.

Finally, offer mentoring/sponsorship programs where up-and-coming employees can seek out advice and coaching to grow their careers. This provides another opportunity for employees to interact and learn from each other, be sponsored for special projects or promotional opportunities, and continue the conversations that let innovation and creativity spark and grow inclusive workplaces.



## Test Your CIT Knowledge

### RETIREMENT

More retirement plan sponsors are considering collective investment trusts (CITs), along with mutual funds and other investment vehicles, as part of their investment menus. As knowledge is growing about CITs (pooled investment funds designed exclusively for qualified retirement plans), there are still many questions about how CITs work.

To help you gauge your knowledge about CITs (also known as collective trust funds, or CTFs), take this short quiz. There are no prizes — other than the CIT knowledge you need when developing your lineup of investment options for your plan participants.

- CITs are issued by banks or trust companies and regulated by:
  - The Office of the Comptroller of the Currency (OCC)
  - A state banking examiner
  - The Securities and Exchange Commission (SEC)
  - Either a or b
- Participants of which types of plans are eligible to invest in CITs?
  - 401(k)s
  - Defined benefit/pension plans
  - Certain 457 government plans
  - All of the above
- CITs have reporting similar to that of mutual funds.
  - True
  - False
- Which document governs a CIT?
  - A prospectus
  - A fact sheet
  - A Declaration of Trust (DOT)
- Features of a CIT can include:
  - The ability to customize fees
  - Availability on recordkeeping platforms
  - Access to different asset classes
  - All of the above
- Paperwork for a plan to invest in a CIT is onerous.
  - True
  - False
- Stable value strategies are available in all investment vehicles.
  - True
  - False
- In 2015, CITs held how much in retirement plan assets?
  - \$2.5 trillion
  - \$1.6 trillion
  - \$0.5 trillion

### Answers to CIT Quiz

- D.** CITs are exempt from registration with the SEC. However, they are governed by several federal and state laws and regulations. The primary regulator will either be the OCC or a state banking examiner, depending on the charter of the CIT provider. Additional regulators that have oversight of CITs include the Department of Labor, the Internal Revenue Service and the SEC.
- D.** Participants in qualified retirement plans can invest in CITs. Plans must be exempt from federal income tax under the IRS Code Section 501.
- True.** CITs are not required to prepare prospectuses, but they offer participant fact sheets, holdings information and performance data. They also provide 404(a)5, 408(b)2 and 5500 Schedule C information.
- C.** The DOT spells out the CIT's terms and conditions, including investor eligibility, valuations, subscriptions and redemptions.
- D.** Many CITs offer flexibility in terms of fees and strategy selection, as well as accessibility through recordkeeping platforms.
- False.** While a Participation Agreement is required, it is typically fairly standard language across CIT providers.
- False.** A retirement plan may offer a stable value strategy through a CIT or a separate account; it is not available in a mutual fund vehicle.
- A.** In 2015, retirement plan investors held \$2.5 trillion in CITs, up from about \$1.6 trillion in 2010, according to Cerulli Associates. (The Cerulli Report: The State of U.S. Retail and Institutional Asset Management 2016)

## For INA Violations, DOJ Set to Cast a Wider Net

### HUMAN RESOURCES

The penalties for hiring noncompliance – such as document abuse and improper Form I-9 completion – can add up to millions of dollars. Now, the government is likely to hand these fines down more frequently.

The language guiding immigrant hiring is set to change if a Department of Justice Office of Special Counsel (OSC) proposal is implemented. If that happens an already common – and often costly – infraction will become harder for employers to avoid, at least without the right legal help and precautions in place. Current law guiding the hiring of immigrants bars what is called “document abuse.” Essentially, this means placing an unnecessary burden on new hires, in regard to the documents they provide for the Form I-9.

### Form I-9 Document Violations

When employers are hiring they're required to have new employees fill out the I-9. This document is a work authorization verification tool. It ensures that new hires are legally eligible to work in the U.S. Trouble bubbles up when hiring professionals request specific documents, though. This is what's considered an unnecessary burden. As long as someone provides the right combination of



*"For INA Violations, DOJ Set to Cast a Wider Net" continued from Page 2*

List A, B and C documents, that should be enough to satisfy I-9 requirements. However, asking someone to hand over something specific, like a green card or work visa, is a violation of the Immigration and Nationality Act (INA).

That's because as long as someone has the right to work in the U.S., that individual should receive the same treatment as everyone else during hiring – whether the person is a citizen, a lawful permanent resident, here on a work visa or eligible for employment through other means. Now, though, that rule is set to become more strict under the OSC's proposal.

### 'Abuse' Becomes 'Unfair'

The word "abuse" in the term document abuse implies intent. This means the human resource professional involved in hiring had to know what he or she was doing when violating INA requirements. If the OSC proposal is implemented, though, a simple slip could set you back thousands, or even millions, of dollars. That's because the words document abuse is set to be switched out for one that casts a wider net: unfair documentary practices.

This new language doesn't require intent, which means more employers may end up caught for document-related infractions in the future should the OSC's

proposal be engrained as law. Previously some cases the DOJ attempted to pursue were considered unfair rather than abusive. This obstructed the department lawyers' paths in these cases. With the burden on the DOJ lightened a bit by the new language, department lawyers will be able to carry more allegations through to settlement.

Now, rather than an intent to harm, the intent only has to be to treat a new hire differently in order for the OSC to bring charges against an employer. This change in INA language came shortly after the penalties for various hiring violations were raised across the board, in some cases significantly. In addition, a new "smart" Form I-9 is currently in the works. This means that employers must be extra vigilant in the coming months to ensure they remain compliant with hiring regulations.

Employers can benefit from revamping or reviewing their human resource policies to make sure hiring is consistently compliant. It seems they're more likely to receive a large fine for hiring violations than they've been in a long time – if ever.

Source: HR Risk Management HELPLINE for NFP Clients. [www.nfphrhelpline.com](http://www.nfphrhelpline.com). Accessed Feb. 2017.

## Can employers still vary employer contributions for different classes of employees? And will the Section 105 nondiscrimination rules ever apply to fully insured plans?

### COMPLIANCE

Any time an employer wants to vary contribution amounts for different classes of employees, the employer must consider two sets of nondiscrimination rules: IRC Sections 105 and 125. Generally speaking, those two sets of rules allow employers to vary employer contributions based on business-related classifications, so long as the result of the variance does not favor highly compensated individuals (HCIs). As an example, the employer could offer a higher contribution to its office employees than to its factory employees, so long as there are more non-HCIs amongst the office employee population.

Before going further, though, it's helpful to review which rules apply to which plans. Section 105 applies now to self-insured medical plans (including HRAs and health FSAs), but does not apply to fully insured medical plans. As most know, ACA made 105 applicable to fully insured plans, but the IRS delayed implementation of that requirement and it likely won't apply any time soon since the Trump Administration is not interested in ACA enforcement). Section 125 applies if employees are required to contribute towards coverage on a pre-tax basis via salary reduction. So, employers might have to contend with both sets of rules (for example, a self-insured plan towards which employees can contribute premium payments pre-tax) or neither set of rules (for example, a fully insured plan for which the employer contributes 100 percent of the premium cost).

If either 105 or 125 apply, though, the employer will have to run the nondiscrimination tests to know if their contribution, eligibility and benefits structure somehow favors HCIs. An HCI under 125 is any officer, a more-than-5-percent owner or an employee making more than \$120,000 (for 2016 and 2017). An HCI under 105 is a top-5-paid officer, a more-than-10-percent owner or an employee in the top-25-percent of all employees with respect to compensation. So, the first step is identifying which individuals are HCIs. Those individual form the group of HCIs in whose favor the contribution, eligibility and benefits structure cannot discriminate. Once the employer has identified that HCI group, the next step is identifying which group or classification of employees is getting the better deal. For example, if the employer is offering 75 percent employer contributions for the office employees and only 50 percent for the factory employees, the employer will identify the office employees as the group getting the better deal. The last step is determining whether that group has more HCIs than non-HCIs. If so, the plan design is likely favoring HCIs, meaning it will violate the nondiscrimination rules. If not, the plan design is likely fine under the nondiscrimination rules.



So, employers are still allowed to vary employer contribution levels. But they will need to take steps to understand and run the related nondiscrimination tests to avoid favoring HCIs. If structured properly, an employer can vary contributions without violating those rules. Lastly, it's not likely that 105 will apply to fully insured plans in the near future—with the ACA in limbo, it's unlikely the new presidential administration would enforce it (and it's possible the Republican replacement plan will either repeal that provision or replace it with something else altogether).

## Need more information?

For information on any of the articles in this newsletter, please contact your benefits advisor.

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More than a leading national corporate benefits producer group, Benefits Partners is a movement that strives to bring all companies — regardless of their size — the greatest, most comprehensive and cutting-edge benefit offerings and resources in the market.

We work to give our member firms a powerful competitive advantage when providing corporate benefits for their customers. We empower collaboration and innovation on every level — from the knowledge we share, to the products we offer, to the tools we create. And we push the development of new platforms, technologies and signature solutions you won't find anywhere else.

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