



ESG is Driving Dramatic Shifts in Business: Will the Legal Profession Follow?

What Is ESG?

INTEGRATION OF ESG FACTORS INTO INVESTMENT ANALYSIS, PROCESSES, AND DECISION-MAKING

E nvironmental



Energy efficiencies, carbon, greenhouse gases, climate change mitigation, waste management, pollution mitigation, and water usage

S ocial



Workplace and board diversity policies, human capital management, labor standards, human rights, data privacy, supply chain management, pay/job equity, and product safety

G overnance



Board composition & structure, oversight & compliance programs, executive compensation, lobbying, and bribery & corruption

“To prosper over time, every company must not only deliver financial performance, but also show how it makes a positive contribution to society.”

- Larry Fink, BlackRock CEO

Avoiding Risk and Protecting Reputation

DEI Issues Have Emerged as among the Most Critical of the Day

MEDIA

Heineken Pulls 'Lighter Is Better' Ad After Outcry Over Racism

In the commercial, a bartender slides a light beer past three black people and into the hands of a fairer-skinned woman.

Hundreds of Google Employees Unionize, Culminating Years of Activism

The creation of the union, a rarity in Silicon Valley, follows years of increasing outspokenness by Google workers. Executives have struggled to handle the change.

BUSINESS DAY

Starbucks to Close 8,000 U.S. Stores for Racial-Bias Training After Arrests

The May 29 date was announced after days of outrage over the arrest of two African-American men at a store in Philadelphia last week.

#MeToo Called for an Overhaul. Are Workplaces Really Changing?

Corporations, entrepreneurs and lawmakers are stepping up efforts to prevent sexual harassment and expand worker protections. Is it enough?

Ford Apologizes for Sexual Harassment at Chicago Factories

The company's chief executive released an apology two days after a New York Times article detailed decades of misconduct.

A CRITIC AT LARGE JANUARY 18, 2021 ISSUE

11 Sue Fox News, Citing 'Intolerable' Racial Bias

BUSINESS DAY

Pepsi Pulls Ad Accused of Trivializing Black Lives Matter

The beverage company apologized for an ad featuring Kendall Jenner giving a smiling officer a soda at a protest.

WHAT'S WRONG WITH THE WAY WE WORK

Americans are told to give their all—time, labor, and passion—to their jobs. But do their jobs give enough back?

Jerry Richardson, Facing Misconduct Allegations, Will Sell Panthers

In a statement that made no reference to the accusations he faces, Richardson said he would sell the team after this season.

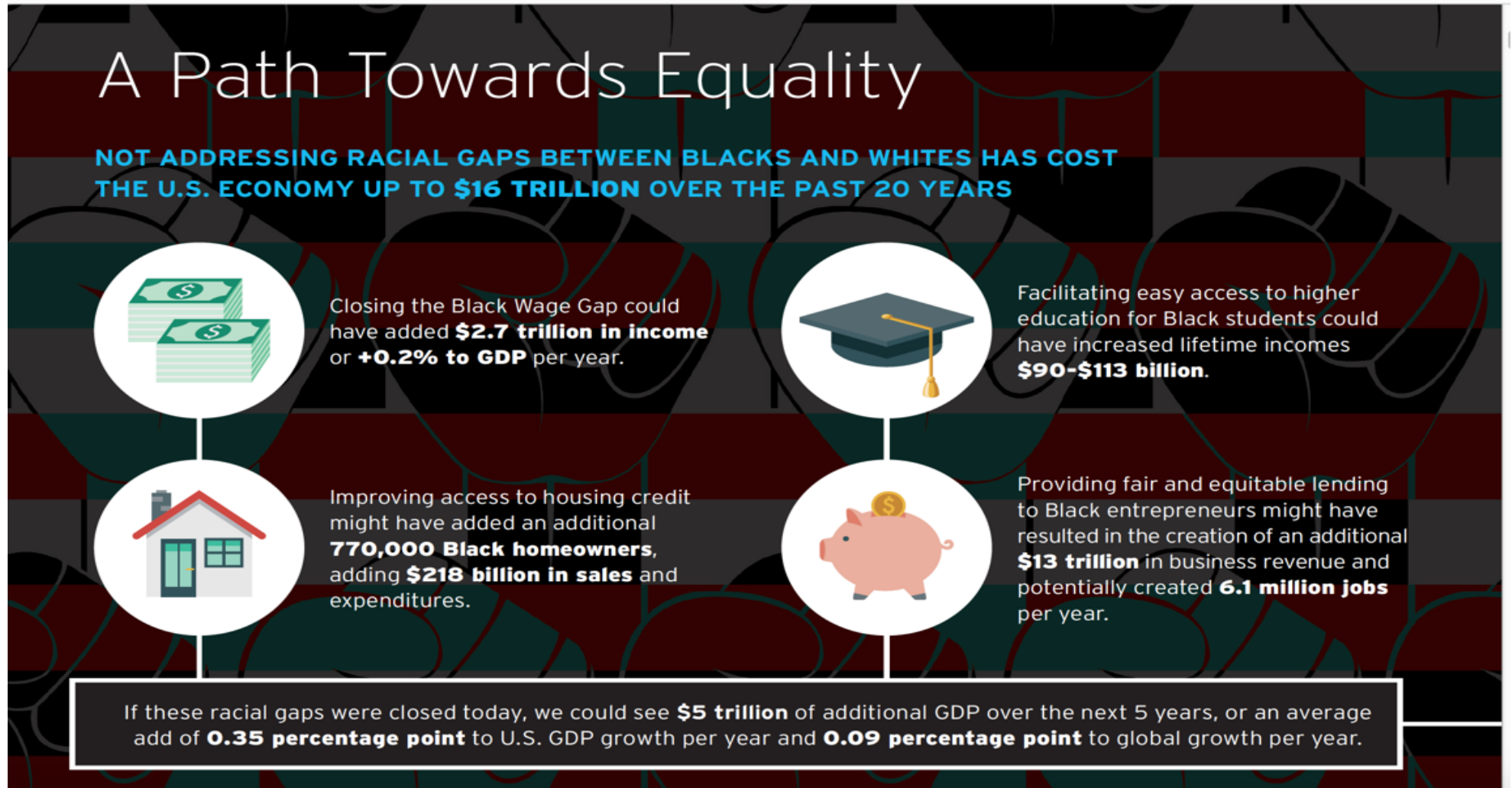
A workplace epidemic of bullying LGBT employees

The office should be a place where employees can focus on getting work done, but a good share of lesbian, gay, bisexual and transgender workers say they're getting harassed on the job.

The Cost of Inequality

- ▶ Citi's 2020 report on the Black Wealth Gap is stunning in its scale and scope. The firm has committed **\$1 Billion over three years** to address the widening racial wealth gap.

Source: Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S. (Citi, 2020)




The Benefit of DEI

The business case for inclusion & diversity is stronger than ever

Diverse companies are **more likely** to financially outperform their peers

Difference in likelihood of outperformance of 1st vs 4th quartile¹

 Gender

 Ethnicity



15%

2014



21%

2017



25%

2019



35%

2014



33%

2017



36%

2019

- ▶ McKinsey has been researching the returns on investing in diversity for years and has found that those companies with the highest levels of gender and racial/ethnic diversity in management outperform those with the lowest levels.

Source: McKinsey Diversity Wins: How Inclusion Matters (2020)

Corporate Commitments to Diversity



- ▶ Goldman Sachs, one of the largest underwriters of IPOs, will no longer take companies public in the U.S. or Europe if they do not have at least one director from an under represented group based on gender, race, ethnicity, sexual orientation or gender identity
- ▶ Reddit co-found Alexis Ohanian resigned from his company's board, and asked to be replaced by a black candidate. Michael Seibel, CEO of Y Combinator, was tapped for the role
- ▶ After a year of decline in the number of women in Microsoft's workforce, diversity became one of the strategic performance goals that determines 50 percent of executives' annual cash incentives
- ▶ Intel: 50% of the annual bonus is based on unspecified "operational goals", including metrics related to diversity, inclusion, employee experience, climate change and water stewardship

Investors Are Paying Attention

- ▶ The Institutional Limited Partners Association (ILPA) is a trade association for institutional limited partners with over **500 member institutions** representing more than **\$2 trillion** USD of private equity assets under management.
- ▶ Over the past year we have seen an increase in LPs requesting DEI information from GPs. This surge coincided with the expansion of the DEI questions in the ILPA model due diligence questionnaire for GPS released in 2018
- ▶ The model questions cover a variety of DEI topics in detail including hiring, promotions, family leave, mentoring, and harassment and discrimination.
 - Required also are internal company metrics on gender, race, and ethnicity



Investors Are Paying Attention, continued

- ▶ In 2020, ILPA announced a new Diversity in Action Initiative. Members commit to:

DEI statement	Internal DEI Tracking
Organizational Goals	DEI demographic data
Action (one of optional nine)	Action (one of optional nine)

Founding Members include:



DEI Disclosures in Recent Litigation

Due to a combination of voluntary frameworks, investor pressure, new regulations, and greater scrutiny by the court of public opinion, ESG disclosures have spawned new litigation, such as:

- claims challenging the veracity of DEI statements based on a company's DEI conduct
- suits directly contesting the propriety of company activities and performance



Gap Board Diversity Lawsuit Demonstrates New Legal Risks for Employers

Oracle Shareholder Suit Calls on Board to Replace 3 Members With Black and Minority Leadership

Qualcomm's All-White Board Slapped With Investor Suit

As companies increase their climate and other ESG-related disclosures, it will be crucial to maintain legal oversight and content review to avoid potential litigation pitfalls

DEI and the Legal Profession: Why It Matters

- ▶ Women and people of color are the majority of law students today and they are placing increasing emphasis on DEI when making career choices
- ▶ Women and/or people of color were over 50% of new GCs of the Fortune 500 in both 2019 and 2020 and there is increasing pressure on in-house departments to diversify
- ▶ Clients are increasingly demanding diverse teams from their law firms



Black General Counsel 2025 Initiative aims to have 100 100 Black GCs of Fortune 1000 Companies by 2025.

Benefits of Diverse Teams According to In-House Counsel



More than one
and a half times
as likely to
achieve a perfect
ten performance



Over
3 times higher
Net Promoter Score®



25%
higher share
of wallet

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Source: Acritas Diversity Report 2016

The Why of a DEI Strategy

In Summary....

Values

Providing equal opportunity is the **right thing to do** and aligns with our purpose and values

Market

Our **clients, customers and investors** are demanding diversity from us

Talent

Companies and firms are in **fierce competition** to recruit and develop top talent

Innovation

Creating **innovative solutions** to complex problems and reducing group think