

Diversity, Equity, and Inclusion (Switzerland)

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The Practice Note reviews key legal and practical issues regarding workplace diversity, equity, and inclusion (DEI) requirements and initiatives in Switzerland.

Scope of Diversity, Equity, and Inclusion

Societal framework

Legal Framework

DEI Measures Implemented by Employers

Recent Developments

Legal Requirements

International Laws Applicable in Switzerland

Affirmative Action and Quotas

Collection of Personal Data

Personal Data Rules Specific to Employment

Personal Data Collection and DEI

Pay Equity

Discrimination and Harassment

Employer measures

Human Rights Laws

Statement and Policy

Training

Work Councils/Worker Representation

Enforcement

Private law

Public law

International law

Cultural Practices and Business Initiatives

Business Strategy

Equity in the Workplace

Inclusiveness in the Workplace and Affinity Groups

Benefits, Flexible Working and Retention Policies

Measuring Success

Companies across the globe must successfully navigate the rapidly evolving landscape of diversity, equity, and inclusion (DEI). Growing pressures go beyond a commitment to an inclusive workplace free of discrimination. Employer attention is also shifting to racial justice, corporate social responsibility, and a continued open dialogue with employees. This Note provides an overview of the established and more recent DEI legal developments and practical considerations in Switzerland.

Scope of Diversity, Equity, and Inclusion

In Switzerland, workplace DEI can be assessed in a variety of ways, including:

- Societal framework.
- Legal framework to protect and promote workplace DEI.
- DEI measures implemented by employers on a voluntary basis.

Societal framework

Historically, women and minority groups have been underrepresented in the Swiss workforce due to:

- Women did not have a right to vote in Switzerland until 1971.
- Married women could not work outside the home without their husband's permission until 1988.
- Switzerland has relatively strict immigration policies, resulting in a less diverse workforce regarding race and ethnicity.

However, women's participation in the workforce has increased significantly, and in 2020 over 60% of women participated in the workforce.

In addition, changes to immigration policy such as free movement agreements with the European Union have led to an increasingly diverse workforce.

Legal Framework

The societal changes largely have been mirrored at the legislative level. In 1981, the Constitution was amended to guarantee equality between men and women and includes a right to equal pay for equal work ([Federal Constitution of the Swiss Confederation, 18 April 1999, RS 101](#) (Constitution)). In 1996, the Gender Equality Act was enacted, guaranteeing workplace equality and prohibiting sexual harassment in the workplace ([Swiss Federal Act on Gender Equality, 24 March 1995, RS 151.1](#) (Gender Equality Act or GEA).)

Switzerland also has made strides recently in introducing legislation protecting LGBTQIA+ individuals. Although these legislative changes are not related directly to the workplace, a more accepting general environment translates into a more accepting workplace environment.

DEI Measures Implemented by Employers

In recent years, an increasing number of employers in Switzerland have chosen to implement DEI measures, such as increasing family leave, providing more flexible work possibilities, and participating in voluntary DEI certifications. Swiss companies also are choosing to include public statements regarding their DEI policies, for example, statements on their website.

The increase in DEI measures likely is also due to the large number of multinational companies in Switzerland, which often try to implement similar DEI policies worldwide.

Recent Developments

In 2021, new measures were introduced extending family leave (see [Benefits, Flexible Working and Retention Policies](#)).

Additionally in 2021, provisions entered into force stating that women must make up at least 30% of the board of directors and 20% of the executive board of companies subject to ordinary audits (Article 734f, [Swiss Federal Act of 30 March 1911 on the Amendment of the Swiss Civil Code \(Part Five: The Code of Obligations\)](#), 31 December 2021, RS 220 (SCO); see [Affirmative Action and Quotas](#)).

Switzerland also recently introduced legislation criminalising the incitation of hate or discrimination on the grounds of sexual orientation (Article 261bis, [Swiss Criminal Code](#), 21 December 1937, RS 311, inserted by No I 1 of the FA, 14 Dec. 2018 (Discrimination and Incitement to Hatred on the Grounds of Sexual Orientation), in force since 1 July 2020). New legislation also:

- Simplifies the process by which an individual may change their gender in the civil status register (Article 30b, [Swiss Civil Code](#), 10 December 1907, RS 210, inserted by No I of the FA of 18 Dec. 2020 (Sex Change in the Civil Register), in force since 1 January 2022).
- Guarantees marriage equality (Articles 94 *et seq.*, Swiss Civil Code, 10 December 1907, RS 210, inserted by No I of the FA of 18 Dec. 2020 (Marriage for All), in force since 1 July 2022).

Legal Requirements

DEI legislation primarily operates on the federal level, although some cantons have legislation providing for stronger protections. For instance, in the Canton of Geneva, maternity leave is 16 weeks (as opposed to the federally required 14 weeks). Current federal legal requirements include:

- **Equal pay:** The principle of equality is enshrined in the Constitution, which guarantees equal rights for men and women, including equal pay (Article 8, paragraph 3, Constitution).

- **Equality in the workplace:** The Gender Equality Act guarantees equality in the workplace and applies to private law and public law employment relationships (Article 2, GEA).
- **Prohibition on sexual harassment in the workplace:** The Swiss Code of Obligations governs individual employment agreements and requires employers to ensure that employees are not sexually harassed or suffer adverse consequences due to sexual harassment (Article 328, SCO).
- **Protection of employee's health:** From a public law standpoint, the Employment Act also requires employers to protect employees' health (Article 6, [Swiss Employment Act, 13 March 1964, RS 822.11](#); [Ordinance 3 on the Employment Act, RS 822.113](#) (OLT 3)).
- **Disabilities in the workplace:** Switzerland has enacted some measures encouraging workplace integration for individuals with disabilities, but these do not contain obligations for employers ([Swiss Federal Act on the Elimination of Discrimination against People with Disabilities, 13 December 2002, RS 151.3](#); [Ordinance on the Elimination of Discrimination against People with Disabilities, 19 November 2003, RS 151.31](#)).
- **Data protection:** Switzerland has strong data protection laws, which means that certain DEI measures used in other jurisdictions would run afoul of Swiss data protection provisions. Data protection in Switzerland principally is regulated through the Data Protection Act. ([Swiss Federal Act on Data Protection, 19 June 1992, RS 235.1](#) (Data Protection Act or FADP).) The Swiss Code of Obligations also contains additional protections that apply to employers handling employees' personal data (Article 328b, SCO).

International Laws Applicable in Switzerland

On the international level, Switzerland is party to several international conventions that contain provisions related to DEI matters, including:

- The International Covenant on Economic, Social and Cultural Rights, which contains an equal pay provision ([RS 0.103.1](#); Article 7(a)(i) International Covenant on Economic, Social and Cultural Rights).
- The Convention on the Elimination of All Forms of Discrimination against Women ([RS 0.108](#)).
- The International Convention on the Elimination of All Forms of Racial Discrimination, which also contains an equal pay provision ([RS 0.104](#); Art 5(e)(i), International Convention on the Elimination of All Forms of Racial Discrimination).
- The European Human Rights Convention, which prohibits discrimination based on the right and freedoms protected by the Convention ([RS 0.101](#); Article 14, Convention for the Protection of Human Rights and Fundamental Freedoms).

However, Switzerland has not signed or ratified Protocol No 12, prohibiting discrimination on a general basis (Protocol No 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No 177)).

Additionally, Switzerland is party to several International Labour Organization conventions related to DEI matters, including:

- The Equal Remuneration Convention (C100 - Equal Remuneration Convention, 1951 (No 100), [RS 0.822.720.0](#)).
- The Discrimination (Employment and Occupation) Convention (C111 - Discrimination (Employment and Occupation) Convention, 1958 (No 111), [RS 0.822.721.1](#)).
- The Maternity Protection Convention (C183 - Maternity Protection Convention, 2000 (No 183), [RS 0.822.728.3](#)).

Because Switzerland is a monist State, implementing instruments are not required to introduce treaties and conventions into national law.

Affirmative Action and Quotas

Switzerland does not have affirmative action provisions or quotas. However, Swiss corporate law contains some provisions on quotas for gender representation on the board of directors and the executive board. These provisions, which entered into force on 1 January 2021, state that women must make up at least 30% of the board of directors and 20% of the executive board of companies subject to ordinary audits. (Article 734f, SCO.)

While there are no sanctions for non-compliance, if the quotas are not met, the company must include information in its remuneration report explaining the lack of representation and the corrective measures being undertaken (Article 734f (i) and (ii), SCO). This obligation does not apply until 2026 regarding the board of directors and 2031 regarding the executive board (Article 4, Transitional Provision to the Amendment of 19 June 2020).

Collection of Personal Data

Switzerland has strict data protection laws, especially regarding the collection of employee data. The Data Protection Act contains several overarching principles that apply to the processing of personal data, defined as all information relating to an identified or identifiable person (the data subject).

In general, to process personal data, it is necessary to have:

- The consent of the data subject.
- An overriding private or public interest.
- A legal basis for processing personal data.

Consent of the data subject is valid only if given voluntarily after adequate information has been provided (Article 4, FADP). Due to the unequal relationship between employers and employees, employees often are not in a position to give consent voluntarily. Therefore, it is suggested that employers do not collect employee personal data when there is not an overriding private or public interest or a legal basis for doing so. The question of whether there is an overriding private or public interest is determined by the judge on a case by case basis, and often depends on the sector in which the employee works, for example, whether the information is necessary for the employment relationship. There also may be an overriding interest to request information related to an employee's criminal history if the employee works in the security sector, and likewise, there could be an overriding interest to request certain medical data in the healthcare sector.

Additional measures apply in the event of cross-border data transfers, especially to countries with inferior data protection laws (Article 6, FADP). A new data protection act will enter into force on 1 September 2023. This act will introduce significant changes in the field of data protection in Switzerland and increase compatibility with the with EU data protection requirements.

Personal Data Rules Specific to Employment

In addition to the general restrictions in the FADP, additional restrictions apply in the context of an employment relationship. Under the Swiss Code of Obligations an employer's access to employee data is allowed only to the extent that the data concerns the employee's suitability for their job or is necessary for the performance of the employee contract. (Article 328b, SCO.)

Personal Data Collection and DEI

Given the issues regarding employee consent and the difficulty in proving an overriding private interest for the employer in DEI matters, traditional DEI initiatives, such as surveying employees to assess the makeup of the workforce and DEI needs, are problematic from a Swiss data protection standpoint.

Employers often do not collect diversity-related data, such as race, ethnicity, sexual orientation, and gender identity, due to Swiss data protection laws. The exception is data required to be collected for the equal pay analysis.

As a rule, DEI workforce measures are allowed if they are:

- Sufficiently anonymised so that the data subject is not identified or identifiable.
- There is a legal basis for doing so, for instance data collected to fulfil obligations related to the equal pay analysis. See [Pay Equity](#).

For more on key issues to consider when handling employee personal data in multiple jurisdictions, see [Practice Note, Global Issues in Employee Data Privacy: Overview](#).

Pay Equity

The Constitution, as well as the equal pay provision in the International Convention on the Elimination of All Forms of Racial Discrimination, as implemented through the Gender Equality Act, guarantee the right to equal pay for equal work. The Gender Equality Act requires some employers to carry out an equal pay analysis and audit. Employers who employ 100 or more employees at the start of any year must conduct an internal equal pay analysis. (Article 13a, paragraph 1, GEA.) The Swiss government has developed a [free tool](#) that employers can use to carry out the equal pay analysis.

Further, companies must have the results of the equal pay analysis audited (Article 13d, paragraph 1, GEA). Details regarding the audit are contained in a separate ordinance issued by the Swiss Federal Council (Ordinance on the Verification of the Equal Pay Analysis, 21 August 2019, RS 151.31).

Employers must inform employees in writing of the results of the equal pay analysis within one year of the conclusion of the audit (Article 13f, GEA). In practice, many employers opt to provide only a summary of the analysis, although some provide more

information, such as the full report or other DEI information. In addition, listed companies must publish the results of the equal pay analysis as an annex to their annual accounts. (Article 13h, GEA; Article 959c, paragraph 1, no 4, SCO.)

Discrimination and Harassment

Employees are protected against discrimination and harassment under both Swiss private law and Swiss public law.

Private law

The Swiss Code of Obligations requires employers to make sure that employees are not sexually harassed and that individuals who have been subject to sexual harassment do not suffer further adverse consequences (Article 328, SCO). This obligation is part of the employer's overall obligation to protect employees' health and personality rights.

The Gender Equality Act also contains specific provisions dealing with sexual harassment, including defining:

- Discriminatory behaviour as any harassing behaviour of a sexual nature related to a person's sex that adversely affects their dignity in the workplace.
- Harassing behaviour as threats, the promise of advantages, the use of coercion, and the exertion of pressure to obtain favours of a sexual nature.

(Article 5, GEA.)

Sexual harassment under Article 5 of the Gender Equality Act also encompasses all unwelcome behaviour based on gender, including behaviour that contributes to making the workplace hostile, such as inappropriate jokes, sexist comments, and rude or embarrassing remarks (Swiss Federal Supreme Court, 21 October 2020 (8C_74/2019)). The Gender Equality Act contains specific remedies for the aggrieved party that go beyond those available under standard employment law provisions (see [Enforcement](#)).

Discrimination and harassment on other grounds are not covered by specific legislation, and the aggrieved party must rely on the remedies available under standard employment law provisions (see [Enforcement](#)). In particular, the Swiss Federal Supreme Court has ruled that the protections contained in the Gender Equality Act do not apply to discrimination founded on an individual's sexual orientation (ATF 145 II 153).

Public law

The Employment Act requires employers to protect employees' health. The Swiss State Secretariat for Economic Affairs (SECO) has stated that this obligation includes an obligation to protect employees from sexual and psychological harassment, as well as discrimination based on gender, race, or religion. (SECO, *Commentaire de l'ordonnance 3 relative à la loi sur le travail* (2015), 302-4.)

In addition, the Swiss Federal Supreme Court has stated that to protect employees, as required by the Employment Act, employers must designate a "person of trust" with whom employees can raise issues, such as problems related to discrimination and harassment (Federal Supreme Court, 9 May 2012 (2C_462/2011)). This person should not be part of the employer's

hierarchical structure and must be able to build trust with employees. The person of trust's main role is to listen and act as a trusted third party. This person of trust:

- Should offer support and assistance.
- May offer advice about next steps that the employee could take.
- Informs the employee of any possibilities to introduce civil or criminal actions.

This role generally excludes the possibility for this person to later act as mediator between the parties or conduct an internal investigation. Moreover, discussions with the person of trust are confidential.

Public authorities are responsible for administering sanctions under the Employment Act (see [Enforcement](#)).

Employer measures

To reduce the risk of discrimination or harassment claims, employers enforce zero-harassment policies. In response to discrimination or harassment claims, employers often carry out an internal investigation to determine the veracity of the allegations and determine what measures, if any, should be taken. For more serious allegations, employers may appoint outside counsel to carry out the investigation.

Human Rights Laws

Both the Constitution, international treaties and conventions to which Switzerland is party, and international customary law provide certain human rights guarantees.

In the workplace, this translates into obligations to protect against slavery and forced labour, degrading treatment, respect for private life and family life, and non-discrimination.

Specific remedies and protections often are built into other laws, including the Swiss Civil Code, the Swiss Code of Obligations, the Gender Equality Act, the Employment Act, and the Swiss Criminal Code. Depending on the nature of the violation, the violations could come under the purview of criminal or administrative authorities or be the object of a civil claim (see [Enforcement](#)).

There also are human rights developments that are not directly related to DEI, they are of key importance for employers and corporate social responsibility programs.

Recent amendments to the Swiss Code of Obligations, which came into force on 1 January 2022, require undertakings headquartered in Switzerland to comply with certain obligations if they:

- Place in free circulation or process in Switzerland minerals containing tin, tantalum, tungsten, or gold or metals from conflict-affected and high-risk areas.
- Offer products or services in relation to which there is a reasonable suspicion that they have been manufactured or provided using child labour.

(Article 964j, SCO.)

The obligations include a due diligence obligation and a reporting obligation.

The due diligence obligation requires these undertakings to maintain a management system and provide information about:

- The supply chain policy for minerals and metals that potentially originate from conflict-affected and high-risk areas.
- The supply chain policy for products or services in relation to which there is a reasonable suspicion of child labour.
- A system by which the supply chain can be traced.

(Article 964k, paragraph 1, SCO.)

In addition, these undertakings must identify and assess the risks of harmful impacts in their supply chain, create a risk management plan, and take measures to minimise the risks identified (Article 964k, paragraph 2, SCO).

The reporting obligation requires these undertakings to publish an annual report on compliance with the due diligence obligation (Article 964l, paragraph 1, SCO).

In November 2020, the Swiss electorate rejected a popular initiative that would have required undertakings headquartered in Switzerland to examine their impact, as well as that of all companies under their control or with whom they have a business relationship, on internationally recognised human rights and the environment. The initiative also would have required appropriate measures to prevent violations of internationally recognised human rights and environmental standards, correction of existing violations, and reporting actions taken to correct violations. In addition, undertakings headquartered in Switzerland could have been held liable not only for damage they caused, but also for damage caused by companies under their control.

Some employers choose to go beyond the minimum legal requirements through the implementation of corporate social responsibility (CSR) policies. In practice, many employers, especially larger companies, include their DEI policy as part of their CSR policies.

Statement and Policy

Employers are not required to have a DEI statement or policy. However, many employers choose to incorporate a DEI and anti-harassment policy in their internal policies, as a part of their responsibility to protect the health of their employees, including providing a workplace free from sexual harassment. (Article 328, paragraph 1, SCO.)

Larger multinational companies also make public DEI statements as part of their overall DEI strategy.

Training

Workplace DEI training is not required in Switzerland. While it has been gaining popularity in recent years, DEI training is not common among Swiss employers.

However, trainings can be used by employers to demonstrate their commitment to protecting the health of their employees and to protecting employees from sexual harassment. Some employers also use DEI trainings as part of their overall DEI strategy.

Work Councils/Worker Representation

Most employees in Switzerland have a right to be represented through employee representative bodies (Article 3 Federal Act on information and consultation of workers in undertakings, RS 822.14). These bodies play a minimal role regarding DEI, although, under the Employment Act, employee representative bodies must be consulted regarding measures taken to protect employees' health. (Article 48, paragraph 1, Employment Act; Article 6, Employment Act; Article 6, OLT 3.) Under the Gender Equality Act, employers are required to have their equal pay analysis audited and may choose to have the audit carried out by the employee representative body. (Article 13d, paragraph 1 let b, GEA; see [Pay Equity](#).)

Enforcement

Enforcement mechanisms exist under both Swiss private law and Swiss public law, as well as international law.

Private law

Employers who fail to protect employees' personality rights, including the right to a private life, or fail to protect employees from sexual harassment, can be held liable for damages under Article 328 of the Swiss Code of Obligations. Damages will vary based on the nature and severity of the violation, as well as the employer's degree of responsibility.

Special procedural rules also apply to claims arising out of employment law, making it easier for employees to introduce actions against their employer. No court costs are charged during these proceedings. (Article 113, paragraph 2 let a and Article 114 let a, Swiss Civil Procedural Code, RS 272 (CPC).) Further, simplified proceedings are used and it is up to the court to establish the facts of the case *ex officio* (Article 243, paragraph 2 let a and Article 247, paragraph 2 let. A, CPC).

Void and Unlawful Terminations

Several special enforcement mechanisms exist for claims related to the termination of an employment agreement.

Swiss employment law prohibits an employer from terminating an employee during certain protected periods. If the employer terminates an employment agreement during a protected period, the termination is void. The protected periods include:

- Pregnancy and the 16 weeks following the birth.
- Extended maternity leave if the newborn is hospitalised for an extended period of time.
- Caregiver's leave.

(Article 336c, SCO.)

In some cases, a termination is considered unlawful under Swiss employment law (Article 336, SCO). An unlawful termination is not void, but the employer may have to pay the employee an indemnity of up to six months' salary (Article 336a, paragraph

2, SCO; Article 336b, SCO). In serious cases, additional amounts also could be due to remedy damages to an employee's personality rights.

Termination is unlawful:

- When based on an attribute pertaining to the person of the employee unless the attribute relates to the employment relationship or substantially impairs cooperation within the business.
- When the employee exercises a constitutional right, unless the exercise of that right breaches an obligation arising from the employment relationship or substantially impairs cooperation within the business.
- Solely to prevent claims under the employment relationship from accruing to the employee.
- Because the employee asserted good faith claims under the employment relationship.
- When the employee is performing Swiss compulsory military or civil defence service or Swiss alternative civilian service.
- When based on the employee's union activity or activity as an employee representative, and the employer does not have just cause.
- When the mass redundancy consultation procedure is not followed.

(Article 336 paragraph 1, let a and b; paragraph 2 let. a – c, SCO.)

Gender Equality Act

The Gender Equality Act contains specific enforcement mechanisms for claims arising from it. Individuals discriminated against under the Gender Equality Act may apply to a court or to the administrative authority for an order:

- Prohibiting or stopping threatened discrimination.
- Requiring existing discrimination to cease.
- Confirming that discrimination is taking place if it is continuing to have a disruptive effect.
- For the payment of any salary due.

(Article 5, paragraph 1, GEA.)

For discrimination related to the refusal of employment or to dismissal, the individual may request only compensatory payment, which is calculated based on the probable or actual salary (Article 5, paragraph 2, GEA). This compensation is limited to the equivalent of three months' salary. (Article 5, paragraph 4, GEA.)

For discrimination due to sexual harassment, the court or the administrative authority also may award the individual compensation (Article 5, paragraph 3, GEA). This compensation is limited to the equivalent of six months' salary. (Article 5, paragraph 4, GEA.)

The Gender Equality Act reduces the burden of proof required in claims arising from it and permits certain organisations to request a finding of discrimination if the probable outcome of proceedings will influence a considerable number of jobs (Article 6 and 7, GEA).

An employee also may challenge the validity of the termination of their employment agreement if the termination took place without good cause following a complaint of discrimination by the employee to a superior or the initiation of proceedings before a conciliation board or a court by the employee (Article 336, SCO; Article 10, GEA).

Public law

The cantonal labour authorities are responsible for enforcing the Employment Act. In some instances, violations of the Employment Act can lead to criminal charges against an employer. Criminal charges may result from violations related to:

The protection of employee health and safety, whether committed intentionally or through negligence.

Working hours or rest periods, if committed intentionally.

Special protections accorded to young workers and women, whether committed intentionally or through negligence.

(Article 59, paragraph 1 let a – c, Employment Act.)

International law

It may be possible to lodge a complaint with a supranational body based on an international convention. After national remedies have been exhausted, violations of the European Human Rights Convention can be brought before the European Human Rights Court and violations of the International Convention on the Elimination of all Forms of Racial Discrimination can be brought before the Committee on the Elimination of Racial Discrimination.

Cultural Practices and Business Initiatives

Business Strategy

Public DEI policies and initiatives introduced as part of an employer's overall business strategy are not common.

However, there are many multinational companies in Switzerland that often try to implement similar DEI initiatives across the company as part of their overall business strategy. Often, medium sized companies adopt DEI initiatives as well, as part of their business strategy to project an international image.

Equity in the Workplace

Equity generally is discussed in the context of equality. Creating a discrimination and harassment-free workplace is an integral part of equality and is at the centre of a lot of DEI legislation in Switzerland.

Equality also includes equal pay. Recently, more accountabilities have been introduced on this issue in the form the equal pay analysis and an equal pay audit (Article 13a-d, GEA).

The upside to an equality-based approach to DEI is that it allows for accountability by creating concrete obligations that employers must meet. The downside to this approach is that it does not address indirect discrimination and other structural reasons for discrimination and the underrepresentation of women and minority groups.

Inclusiveness in the Workplace and Affinity Groups

Affinity groups are not common in Swiss workplaces. However, some larger, multinational companies may have them as part of their overall DEI strategy.

Benefits, Flexible Working and Retention Policies

Under Swiss employment law, employees are entitled to:

- At least 14 weeks of maternity leave (Article 329f, paragraph 1, SCO).
- Extended maternity leave if the newborn child is hospitalized (Art 329f, paragraph 2 SCO).
- Two weeks of paternity leave, as of 2021 (Article 329g, SCO). Care for family members as of January 2021 (Article 329h, SCO.)
- Fourteen weeks of leave to care for a child whose health is seriously impaired by illness or accident, as of July 2021 (Article 329i, SCO).

Some companies, especially larger multinational companies, choose to go beyond these statutory requirements as part of their overall DEI strategy. These measures may include longer leave periods, onsite daycare, daycare vouchers, and flexible working options.

Following the increase in remote working during the Covid pandemic, many employers are allowing employees work from home at least part of their schedule.

Measuring Success

Employee surveys are not very common in Switzerland, due, at least in part, to concerns over data protection (see [Collection of Personal Data](#)).

However, employees may choose to discuss issues around DEI with their superior during the annual interview that is common in many companies. Employees also can bring up concerns, including reports of discrimination and harassment, with the person of trust designated by the employer.

Many employers conduct exit interviews to gather information from departing employees, including their reason for leaving. This can give employers an idea of factors they should be considering when implementing DEI measures and initiatives.