

Ius Laboris Webinar

Diversity & inclusion, the impact of COVID on women in the workplace and more

Tuesday 9 March 2021

16:00 (CET) / 10:00 (EST)



SPEAKERS



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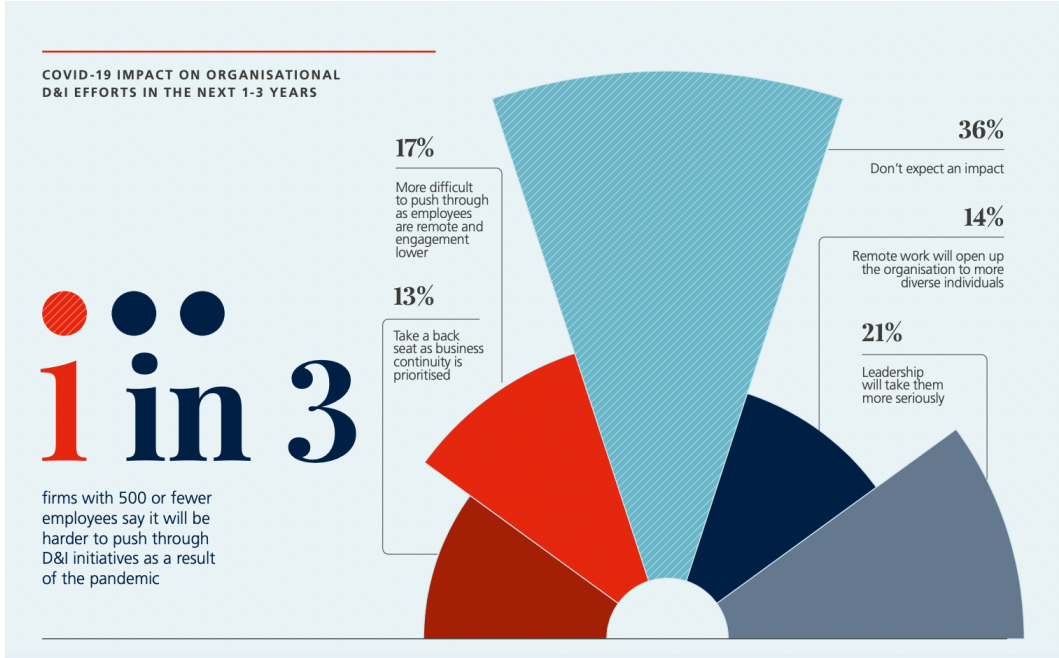
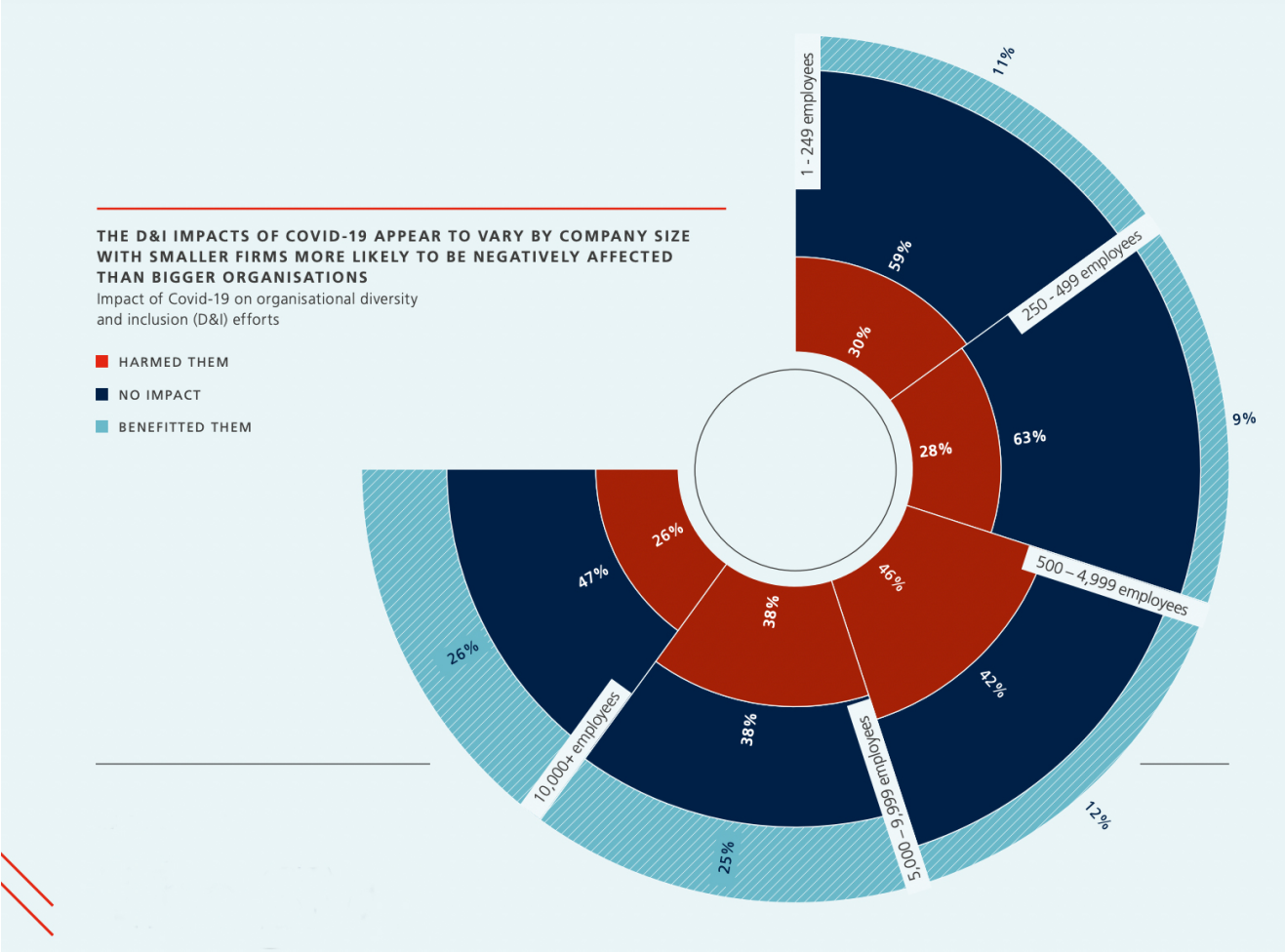


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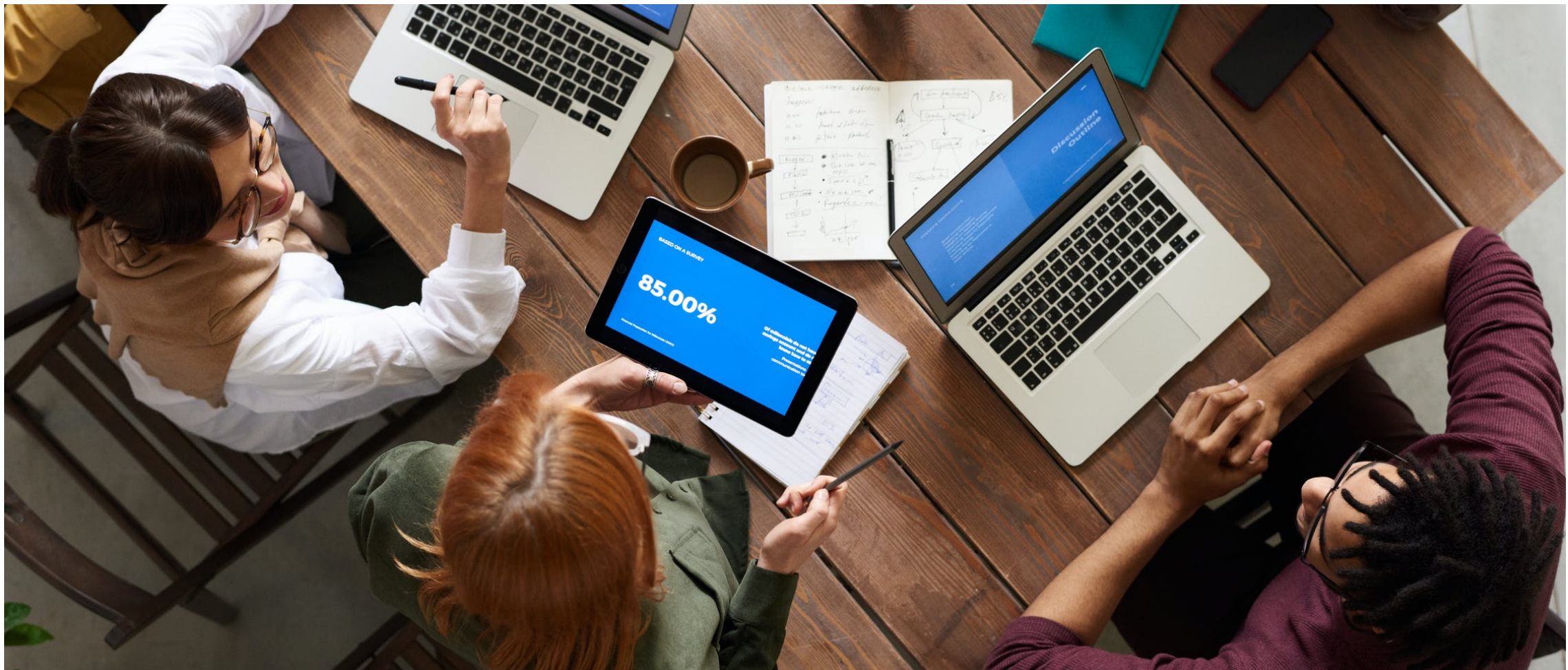


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THE IMPACT OF COVID-19 ON D&I



Learn more:
The Word 2021: Force for Change



DIVERSITY & INCLUSION AND HOW TO ADDRESS UNCONSCIOUS BIASES

UNCONSCIOUS BIAS IN CANADA

- **Multiculturalism and Immigration:** Canada is considered to be one of the most multicultural societies, comprised of a high degree of racial, ethnic, and religious diversity. Canadians also generally hold favourable views of immigration.
- **Gender and Racial Inequity in the Workplace:** Despite Canada's multicultural history and pro-immigration policies, statistics show that women and racialized people are under-represented in senior positions.
- **Unconscious biases:** *“Unconscious assumptions, beliefs, attitudes and stereotypes that human brains have about different groups. These learned mental short-cuts affect how we perceive and respond to people...Unconscious biases systematically disadvantage already disadvantaged people and provide un-earned advantages to those already advantaged. As a result of these impacts, unconscious biases negatively affect our ability to identify and hire the best candidates.” (University of Victoria)*
- **Human Resource Considerations:**
 - Training: Implement unconscious-bias training for those in recruitment
 - Introduce Diversity and Inclusion committee: How to get buy in?
 - Collect demographic data: What are the limitations and risks?
 - How about arguments that Diversity and Inclusion undermines the merit principle?
- **Human Rights Legislation:** “Special programs” permitted under human rights legislation to advance the interests of historically disadvantaged groups can be effective in reducing discrimination in employment.

COUNTRY SPECIFICS – UK

UNCONSCIOUS BIAS IN THE UK

- #metoo and Black Lives Matter have made unconscious bias a big talking point. Media interest in unconscious bias after a study around the commentary in European (French, Spanish, Italian and British) football matches. The findings show:
 - Commentators praised players with lighter skin tone as more intelligent, higher quality, and harder working.
 - Players with darker skin tone were significantly more likely to be reduced to their physical characteristics or athletic abilities -- namely pace and power.
- Generally unconscious bias has been addressed through training. This is because an employer has a defence to a discrimination claim if they took all reasonable steps to avoid the discrimination.
- Recent debate about the value of training. The UK government has just announced that it will stop unconscious bias training for the Civil Service because “*there is currently no evidence that this training changes behaviour in the long term or improves workplace equality in terms of representation of women, ethnic minorities or other minority groups*”.
- Our advice is that training is important but it cannot be ‘tick box’. A recent appeal case criticised “stale” diversity training and emphasised the importance of looking at the effectiveness of the training and ensuring it is refreshed.

COUNTRY SPECIFICS – US

UNCONSCIOUS BIAS IN THE US

- Unconscious bias is a significant focus in the US workplace - social stereotypes about certain groups of people that individuals form outside their own conscious awareness. These often show up in the workplace as:
 - Microaggression - a statement, action, or incident regarded as an instance of indirect, subtle, or unintentional discrimination against members of a marginalized group such as a racial or ethnic minority.
 - Code Switching - the modifying of one's behavior, appearance, etc., to adapt to different sociocultural norms.
- Interrupting bias is key
 - Make the invisible, visible. Oftentimes the perpetrator is unaware of the impact of their actions.
 - Educate the actor/speaker. Shift the focus of what the person intended to the impact.
 - Disarm the microaggression. Steering the conversation away from action to communicate that it's offensive.

“You are the sum total of everything you've ever seen, heard, eaten, smelled, been told, forgot - it's all there. Everything influences each of us, and because of that I try to make sure that my experiences are positive..”



COUNTRY SPECIFICS – FRANCE

UNCONSCIOUS BIAS IN FRANCE

- The matter is often addressed in public debates – most recently:
 - Discrimination bias in the police, especially with regards to identity checks
 - Media awareness is rising: Message of tolerance, TV documentary addressing transgender individuals
- Discrimination is obviously prohibited – laws are enacted on a regular basis to improve the protection and the law in general. Most recently, in 2017, a training obligation was included for companies with over 300 employees, with regards to discrimination in general.
- The national Ombudsman just launched an online platform to report any case of discrimination, that goes directly to her office. The Ombudsman may appear in Court and also has a name & shame prerogative.
- The obligation to use an anonymous résumé was once included in law but never actually implemented – it is now repealed
- Associations fighting against discrimination often create fake profile to apply for jobs or to rent a flat and publicly shame companies/individuals who discriminate against people of colour or of foreign ascent.



TRANSPARENCY IN THE WORKPLACE – GENDER AND OTHER PAY GAPS

DIVERSITY TRANSPARENCY IN THE UK

- Gender pay gap reporting is mandatory in the UK for a business with more than 250 employees. It is likely that the threshold will reduce. An employer must use a 'snapshot' date and report the following on a government portal and on the corporate website:
 - percentage of men and women in each hourly pay quarter
 - mean (average) gender pay gap using hourly pay
 - median gender pay gap using hourly pay
 - percentage of men and women receiving bonus pay
 - mean (average) gender pay gap using bonus pay
 - median gender pay gap using bonus pay
- Employers encouraged to prepare a narrative to explain their pay gap and the steps they intend to take to address it. Data must be kept on the website for 3 years to allow a year-on-year comparison. Reporting suspended by CV-19 but there remains a CV-19 impact on the figures.
- Pressures to introduce ethnicity pay gap reporting post Black Lives Matter. Government response awaited (challenges with categorisation). Many large employers voluntarily disclose.
- Suggested reform: to report redundancy information by sex and race (and other protected characteristics) and voluntary framework for reporting on employee disability and mental health.

COUNTRY SPECIFICS – CANADA

PAY EQUITY LEGISLATION

Pay equity laws have been introduced by Ontario and Federal Government to address gender-based wage discrimination.

- Ontario Pay Equity Act: Ensures women and men are paid equally for work of equal value.
 - Value is based on skill level, effort, responsibility and working conditions.
- Federal Pay Equity Act: While not yet in force, this legislation will ensure employers are providing equal pay to men and women for doing work of equal value. Employers will be required to establish a pay equity plan, and update this plan every 5 years.
- Ontario Pay Transparency Act: Legislation has been delayed indefinitely. The intended purpose was to eliminate gender and other biases in hiring, promotion, employment status and pay practices.

AMENDMENTS TO FEDERAL EMPLOYMENT EQUITY REGULATIONS

- As of 1 January 2021, employers governed by the Canada Labour Code are expected to implement pay transparency measures.
- Applies to federally-regulated private sector employers with 100+ employees covered by the Employment Equity Act.
- Requirements:
 - Employers required to report their salary data to show wage gap information.
 - Salary data also required to be included in annual reporting on employment equity (Government of Canada).

COUNTRY SPECIFICS – US

US PAY EQUITY

Pay equity is a method of eliminating gender and race discrimination when establishing and maintaining wages.

- **Federal** – Women still earning 81.6 cents for every dollar men earn. Hasn't changed since 2017. At the current rate, it will take until 2059 for women to achieve equal pay. Gaps not only persist throughout time, they widen based upon race and ethnicity.
 - Equal Pay Act of 1963, requires equal pay for equal work. Prohibits discrimination based on sex.
 - Title VII of the Civil Rights Act of 1964, catch all for claims that don't fit under the EPA.
 - Lilly Ledbetter Fair Pay Act of 2009. Strengthened workers' rights and eliminated the 180 day time limit on when age discrimination lawsuits could be filed, allowing workers to sue for every unfair paycheck issued
- **State** – All but 2 states in the US have specific equal pay act laws that expand the protections of the EPA
 - Pay Transparency Laws – protect federal employees and federal contractors' inquiries regarding compensation.

COUNTRY SPECIFICS – FRANCE

DIVERSITY TRANSPARENCY IN FRANCE

- Following the example of other countries, France implemented in 2019 the professional equality index, for all companies with above 50 employees. They have to calculate a grade, based on the following indicators:
 - Wages spread between men and women
 - The spread of individual raises/promotions between men and women
 - The number of employees who received a raise when they came back from maternity leave (that raise is mandatory)
 - Parity amongst the 10 highest paid.
- The employer must publish the grade on 1 March each year, which is publicly available on the Ministry of Labour website. The Government publicly named and shamed large companies whose grade was deemed insufficient.
- If the grade is below 75, corrective measures must be implemented. Failure to comply is punishable by a fine of up to 1% of the gross wage.
- The Government is now looking to go further to force companies to publish not only their final grade, but also the detail of their calculation, for each indicator.



IS COVID A NET LOSS FOR WOMEN IN THE WORKPLACE?

COVID'S IMPACT ON WOMEN IN THE WORKPLACE

“THE WOMEN’S RECESSION”

- Women are among the groups hit the hardest by the pandemic
- Women, by a 10-point margin, have seen the majority of the job losses, as large parts of the economy have shut down
- The pandemic/lockdowns have hit sectors of the economy that disproportionately employ women
- Even in the male-dominated industries, women are losing their jobs at greater rates

LONG TERM EFFECTS ON WOMEN AND GENDER EQUITY

- Stalled economic growth and inability to protect/advance gender equality
- Women may struggle to return to work

LOSS IN PROMOTIONS AND HIGH-LEVEL POSITIONS FOR WOMEN

- From the beginning of 2015 to the beginning of 2020, the share of women in senior vice president roles grew from 23% to 28%, with the overall share of women in the C-suite growing from 17% to 21% over that same time period.
- The pandemic is proving to be a real threat to this progress with women leaving the workforce at higher rates than men

COUNTRY SPECIFICS – CANADA

THE GENDER IMPACT OF COVID-19 IN CANADA

- Long-standing social inequities have been exacerbated by pandemic circumstances
 - Increased burden of caregiving/housework on women and increased rates of unemployment, particularly for racialized women
- More women have been diagnosed with COVID-19 than men in Canada
 - May be due, in part, to high ratio of women working as front-line workers in health services, caregiving, cleaning, and in other essential roles.
- Higher proportion of women lost their jobs in the early stages of the pandemic
 - 63% of the 1 million jobs lost in March 2020 were jobs done by women
 - Recovery of job loss more advanced by men than women, as of July 2020
 - Women's job growth has been primarily in part-time work, regaining less than 1/3 of full-time job loss by July 2020

COUNTRY SPECIFICS – FRANCE

THE GENDER IMPACT OF COVID-19 IN FRANCE

- Although we still lack distance, the general consensus is that the crisis has aggravated the existing gap between men and women:
 - There are more women than men among first line workers (cashiers, nurses, etc.), which means they are more at risk of being infected. The anxiety of having to physically go to work is higher for women than for men
 - 36% of women report their workload increased during the crisis, compared to 29% of men
 - Women report they had a higher mental load due to having to deal both with the new ways of working and also with family/personal matters. 87% of them say they had to take care of children and work at the same time (vs. 76% for men). This is explained by the fact that they more often live alone with children and that, when in a relationship, their spouse more often goes to work
 - 70% of the leave taken for home-schooling (during the first lockdown) was taken by women
 - Studies have found that women lost more remuneration than men during the crisis

COUNTRY SPECIFICS – UK

THE GENDER IMPACT OF COVID-19 IN THE UK

- Significant time and resources have gone into studies
- Pre COVID-19 women's labour force participation had reached a record high. Female employment was 72% in the final quarter of 2019
- UK parliamentary report (Unequal impact? Coronavirus and the gendered economic impact). Evidence that women (and particularly BAME women) disproportionately impacted by job losses because they are disproportionately employed in less secure, low quality work arrangements
- The gender gap in total childcare time increased over the pandemic; women increased the number of hours devoted to care by more than men, putting an additional burden on working mothers. Institute for Fiscal Studies research found that mothers found it harder to work productively from home during the pandemic
- Report recommended:
 - Recovery investment plans avoid being skewed towards male-dominated sectors
 - Make flexible working day-1 right
 - Extend redundancy protection to pregnant and new mothers



AFFIRMATIVE ACTION

AFFIRMATIVE ACTION IN FRANCE

- As a general rule, affirmative action is very limited in France as the Constitution prohibits making a difference between citizens based on ethnicity. Three notable exceptions:
 - Affirmative action based on a geographical criterion is allowed: it has been implemented for the place of study to favour students from underprivileged suburban areas – the best known example is SciencesPo, a famous political science school
 - There is a quota for handicapped workers in the workplace (6%). However, ‘alternate’ measures can be implemented, or companies can pay a contribution instead
 - Most recently, an obligation was implemented to have strict equality between men and women on candidate lists for national elections as well as professional elections. For professional elections, within the workplace, men and women must be presented in alternation on candidate lists for the list to be valid. The number of men and women on the list must correspond to the proportion of men and women among the electoral pool.
 - ❖ These rules are difficult for the unions to apply in practice, as they have had issues finding interested candidates of both genders (and in most instances, women).

COUNTRY SPECIFICS – CANADA

FEDERAL EMPLOYMENT EQUITY ACT

- **Requirements:** Review workforce to eliminate employment barriers for designated groups; institute proactive policies to ensure representation of designated groups; collect data to determine degree of representation of designated groups in the workforce; prepare and implement an employment equity plan; and maintain employment equity records (Employment Equity Act)
- **Designated Groups:** Indigenous persons, women, persons with disabilities, and members of visible minorities

COUNTRY SPECIFICS – US

AFFIRMATIVE ACTION – QUOTAS NOT ALLOWED

- 2021: Students for Fair Admission v. Harvard – 2/25/21 Cert. to Supreme Court to determine if Harvard discriminates against Asian Americans when its undergraduate college uses race and ethnicity as a factor in reviewing applications
- 2016: Fisher v. Univ. of Tx. – Race/ethnicity can be used in admissions to meet the school's goals of increased diversity, but the university has "a continuing obligation" to meet the legal test of "strict scrutiny" by "periodically reassessing the admission program's constitutionality, and efficacy, in light of the school's experience and the data it has gathered since adopting its admissions plan, and by tailoring its approach to ensure that race plays no greater role than is necessary to meet its compelling interests"
- 1978: Regents of the Univ. of Calif. v. Bakke – U. Calif. Davis, could not reserve slots with separate admissions standards for minority applicants. Colleges can consider race/ethnicity in admissions decisions in ways that did not create quotas
- 2003: Gratz v. Bollinger – U. of Mich. at Ann Arbor unconstitutionally used an undergraduate admissions system in which underrepresented minority applicants received points on the basis of their ethnic or racial background
- 2003: In Grutter v. Bollinger – U. of Mich.'s law school could consider race/ethnicity because it did so through a "holistic" review and not by simply awarding points based on race/ethnicity

PRIVATE EMPLOYERS

- Rooney Rule - a National Football League policy that requires league teams to interview ethnic-minority candidates for head coaching and senior football operation jobs
- Mansfield Rule – Requirement to consider at least 30 percent women, lawyers of color, LGBTQ+ lawyers, and lawyers with disabilities for leadership and governance roles, equity partner promotions, formal client pitch opportunities, and senior lateral positions.


COUNTRY SPECIFICS – UK

POSITIVE ACTION (AFFIRMATIVE ACTION) IN THE UK

- Positive discrimination is unlawful. Positive action is only allowed in very limited circumstances. Either:
 - Protected group suffers a disadvantage; has particular needs (e.g. in relation to the English language); or does not participate enough in an activity. Can take proportionate action to address that. This does **not** include recruitment or promotion
 - Tie breaker on recruitment/promotion. Can give preference to an under-represented group if the candidate is 'as qualified'; granting the preference is proportionate; and there is no policy of automatically granting a preference.
- Key messages:
 - Need evidence of under representation
 - You can't offer employment automatically on basis of a protected characteristic
 - You can take proportionate action to help people get access to employment
 - Improving diversity of shortlists is effective, but you should set targets not quotas
 - Some effective tactics are not positive action and are always lawful (e.g. equality impact assessment of selection criteria)

DIVERSITY SERIES

<https://iuslaboris.com/serie/diversity-in-the-workplace/>



8 Ways to Encourage Neurodiversity at Work

If you're interested in workplace diversity and inclusion, you've probably been hearing a lot about neurodiversity lately. Here are 8 ways to encourage neurodiversity at work.

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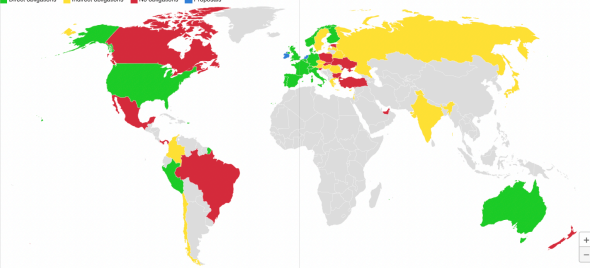
Diversity in the Workplace

The issues around diversity that face wider society are all too apparent in the workplace too. We look at the key bones of contention and the strategies being used to resolve them.

Gender pay gap map

Reporting on pay disparities between men and women is a tool many governments worldwide employ in the fight against discrimination in the workplace. This map shows at a glance which countries currently have reporting obligations in place for employers in relation to what men and women are paid in their organisations.

Legend: Direct obligations (Green), Indirect obligations (Yellow), No obligations (Red), Proposals (Blue)



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Talking Work

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Women in the workplace - challenges and ideas from Denmark

Talking Work

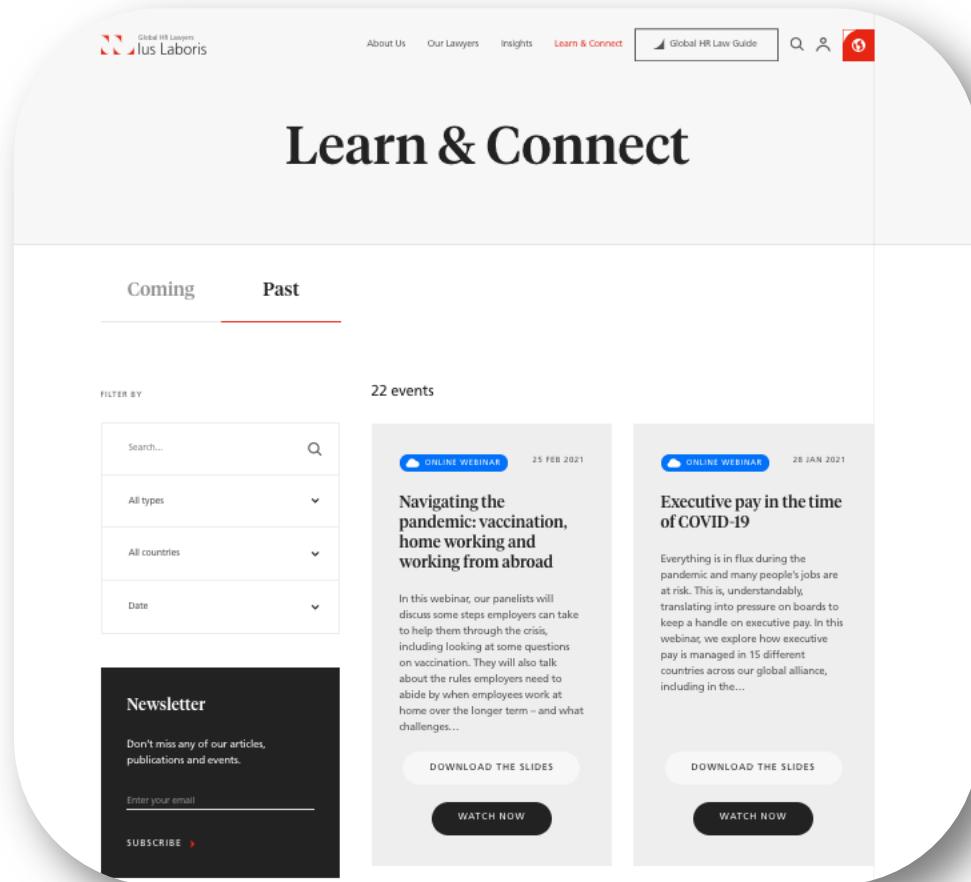
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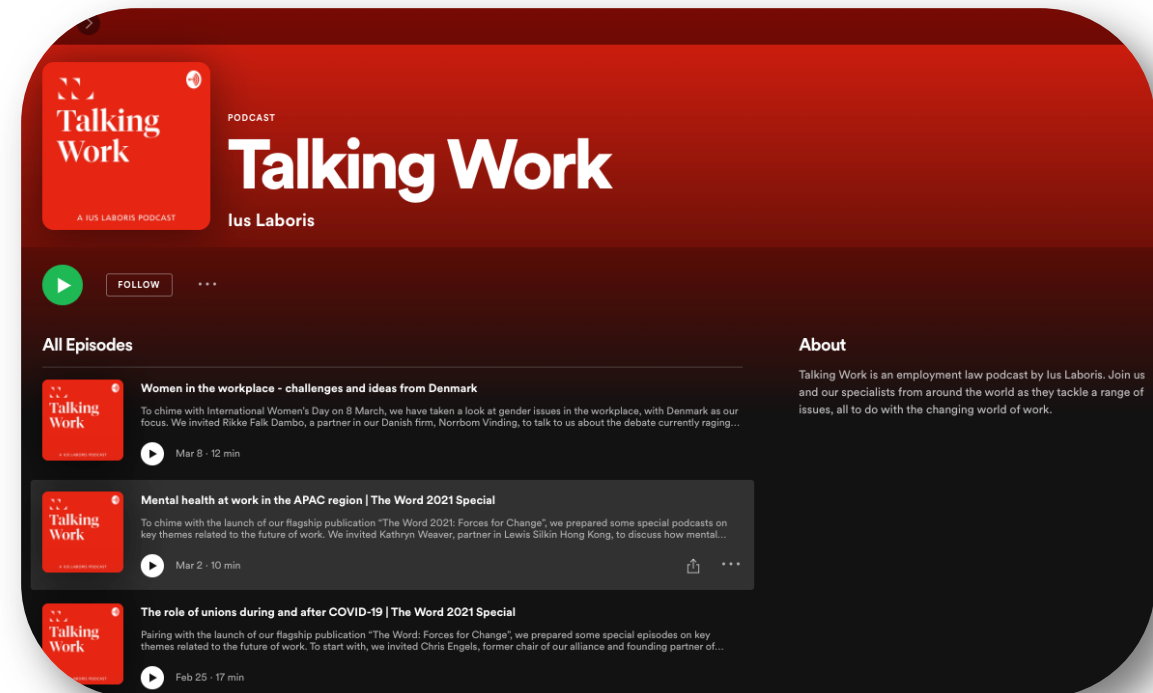
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WEBINARS & PODCASTS

Webinars: <https://iuslaboris.com/learn-connect/>



Podcast series – Talking Work:
https://open.spotify.com/show/0NpiCVfvpZrjPiVJLeEXmv?si=Xe5nbn2hToWe9uR4pK_Jjg





North America: Canada - Mexico - United States

Central & South America: Argentina - Brazil - Chile - Colombia - Panama - Peru - Venezuela

Western Europe: Austria - Belgium - Cyprus - Denmark - Finland - France - Germany - Greece - Ireland - Italy
Luxembourg - Malta - Netherlands - Norway - Portugal - Spain - Sweden - Switzerland - United Kingdom

Eastern Europe: Belarus - Bulgaria - Croatia - Czech Republic - Estonia - Hungary - Latvia - Lithuania - Poland - Romania - Russia - Serbia - Slovakia - Slovenia -
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