

# PUBLICATION

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## Implicit Bias – Awareness and Accountability

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***Senior Counsel Randy Patterson of the Firm's Knoxville office recently wrote an insightful article that was published in the April 2024, Volume 52, Issue 4 edition of DICTA magazine through the Knoxville Bar Association. Whether you're revisiting it for a fresh perspective or encountering it for the first time, we hope it sparks new ideas and prompts meaningful conversations.***

Everyone has likes and dislikes. Individual preferences are normal and are not necessarily a bad thing. However, it is important to recognize that every selection begins with bias. For example, we might choose tea as a drink, rather than coffee. Or when making a hiring decision, we might choose the candidate with higher grades or from a prestigious school. Such decisions are routine, and although they may be "discriminatory" by definition, they are generally not maliciously motivated. The selection of the "best" resume can be as neutral as the choice of beverage, but such a decision could also be influenced by unconscious bias. If the decision maker deduces characteristics such as race, gender, or age from an application, and then allows those factors to influence the choice of who to hire, that decision suggests improper bias. Biases are motivating tendencies which everyone carries, and which are typically the byproduct of the unconscious processing of stereotypes, even when the decision maker consciously believes that everyone should be treated fairly.

While most individuals do not intentionally make decisions or preferences based on characteristics like gender, color, or age, the presence of unconscious bias remains a contributing factor, and often eliminates qualified candidates or improperly favors others. As the Kirwan Institute observed, implicit biases tend to cause people to "favor our own in-group," that is, to give preference to others like us. For example, a University of Tennessee (UT) graduate might reasonably give greater consideration to applicants from UT. This unconscious favoritism can also result in improper decisions and disparate impact. Consider a manager who hires only candidates who are of his/her race or gender or one who promotes only those who "look like him/her." Such decision-making unbalances the playing field and results in a less diverse workforce.

Implicit bias can be positive or negative and is best understood as an attitude toward a person, place, thing, or group that an individual holds at an unconscious level. To eliminate implicit bias in the decision-making process, it is necessary to understand how such biases work. Studies in neuroscience have shown that only a small percent of cognitive activities are conscious, with the remainder of activities being driven by the subconscious. Further, both conscious and subconscious beliefs are shaped by factors that define our worldview, such as geographic origin, age, sex, race, profession, sexual orientation, education, income, religion, location, and many other factors. These myriad influences, which bombard an individual throughout life, come together to shape subconscious stereotypes or implicit biases.

The influence of a subconscious bias is not unlike that of a schema or essentially a mental shortcut. For example, it is unnecessary to engage conscious thought when picking up keys or a wallet that might be carried each day, or even the route taken when driving to the office. While these are helpful, similar shorthand schemas can influence the perception of people or groups of people. Accordingly, schemas can be a benefit by helping to quickly and accurately access a situation, or if left unchecked, they can lead to flawed decision making which may prove harmful or even unlawful.

It is common for schemas, and thereby implicit biases, to influence how we perceive others. Consider that a small percentage of American men are over six feet tall, yet a disproportionate number of Fortune 500 CEOs are over that height. This in fact suggests an implicit bias that taller males are perceived to be stronger, more successful leaders. Similar schemas extend to gender and race and often adversely impact groups such as women and minorities in the workforce. The EEOC has concluded that unconscious bias directly creates "stereotypical assumptions" and that such unconscious bias adversely impacts the success of certain groups in federal employment.

Biases also come into play which may not have direct implications under federal or state employment laws. These schemas or implicit biases also influence perceptions of individuals based solely on such factors as a name, or by generational issues such as tattoos, hairstyles, or other markers. Those traits or appearances routinely stimulate subconscious impressions which can lead to bias and directly impact the opportunities of these individuals.

Businesses have been conducting inclusion and diversity training for years, and while such training does reduce the propensity for outright discrimination in the workplace, the training does not have the scope to redress the underlying cause of discrimination, which is often implicit bias. Many employers, including the federal government, have now expanded traditional diversity curricula to include training on implicit bias.

Solutions for negating the impact of unconscious bias initially involve awareness and remaining mindful and conscious of the presence of bias or inadvertent shortcuts to conclusions. As a threshold, to negate subconscious bias, we must acknowledge the presence of such subconscious beliefs, and then identify discrepancies between conscious ideals and subconscious schemas or biases. It is equally important to avoid first impressions or knee-jerk reactions to people or situations. Taking additional time in decision-making, particularly after acknowledging the presence of an unconscious bias, more often leads to real objectivity. If a bias is acknowledged toward or against a particular group, one solution might be to gain more exposure to, or greater awareness of, that group.

Finally, it is crucial that we stand accountable for our practices and policies; which may be accomplished through more deliberate decisions and thought processes. Most importantly, we must maintain a constant awareness of our own personal views, be willing to own those biases, and work toward positive change.

## Resources

[EEOC Best Practices for Employers and Human Resources/EEO Professionals](#)

[ABA - Eliminating implicit bias: First step, admit you have it](#)

[Business Insider - Everyone has unconscious biases - here's how to identify, address, and overcome them](#)

[K-State Research and Extension - Ageism and Implicit Bias](#)

[Falling Short: On Implicit Biases and the Discrimination of Short Individuals, 52 Conn. L. Rev. 719 \(2020-2021\)](#)

[The End of Race Politics, Argument for a Colorblind America, Coleman Hughes, Penguin Random House LLC \(2024\)](#)