**Seyfarth**

# DEI Micro-Webinar Series:

# Best Practices and Key Considerations for Employers Implementing Employee Resource Groups (ERGs)

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**Seyfarth Shaw LLP**

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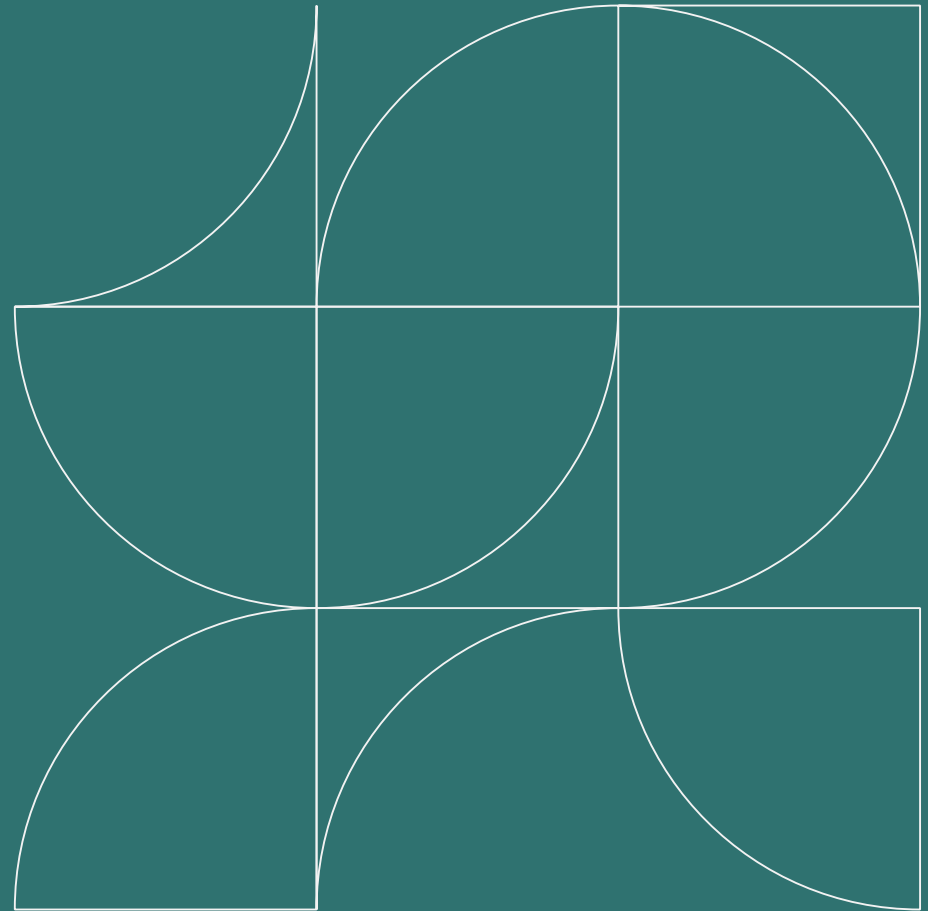sskahan@seyfarth.com
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# Agenda

**1 |** Definitions: What Is An ERG?

**2 |** Legal Framework

**3 |** Aligning ERG Objectives with Company Goals

**4 |** Best Practices

# 1

## Definitions:
## What Is An ERG?

# BRG vs. ERG vs. Affinity Group?

# What are ERGs?

**Background on Employee Resource Groups (ERGs)**

- Business Resource Groups (BRGs), Employee Resource Groups (ERGs) and/or Affinity Groups should be:
  - voluntary
  - employee-led
  - promote an inclusive workplace
  - inclusive of all employees

- Connect groups of employees who share interests and identities

- Typically created around and focused on common identity
  - race,
  - gender,
  - sexual orientation,
  - etc

**2**

# Legal Framework
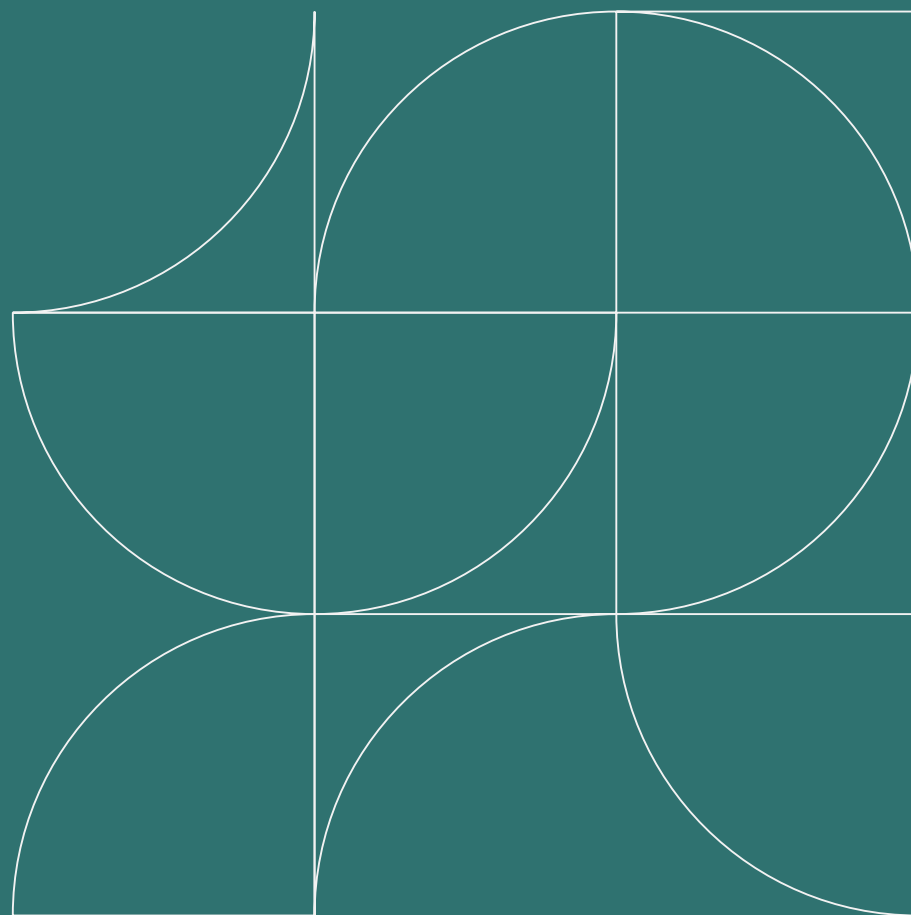
# Legal Framework When Considering ERGs

## U.S. Law Requires Consistent Treatment

- Title VII of the Civil Rights Act of 1964 prohibits discrimination based upon:
  - Race
  - Color
  - Religion
  - Sex
  - National Origin

- Employers **cannot** apply policies inconsistently for these categories

- For example:
  - A company **can** have a policy of refusing to recognize any ERG that seeks to promote any religious positions or beliefs
  - A company **cannot** have a policy of refusing to recognize an ERG that seeks to promote one particular belief vs. other religious beliefs

# EEO Considerations: Treat All ERGs and Employees Consistently

- Be careful to treat members of all ERGs the same

- Ensure that members of ERGs are treated the same as employees who are not members of an ERG

# Legal Compliance Issue: Complaints Related to ERGs

- Have a clear process in place for dealing with complaints of discrimination or harassment made during meetings

- Be mindful of legal obligations created by complaints raised during meetings through appropriate channels

- Consider implications of confidentiality or content based "gag rules" for meetings

# Manage The Potential Labor Risk

- Section 8(a)(2) of the NLRA makes it an unfair labor practice for an employer to "dominate or interfere with the formation or administration of any 'labor organization' or contribute financial or other support."

- The term "labor organization" is defined very broadly to include virtually any type of employee participation committee which "deals with" an employer.

# Wage Hour Considerations

- Define ERG participation carefully for non-exempt personnel

  - "work" time under FLSA and/or state law, compared to

  - totally voluntary, unrelated to work duties

- Other wage hour flags:

  - Reasonable business expenses incurred

  - Expectation of increased compensation for leadership roles

# 3

# Aligning ERG Objectives with Company Goals
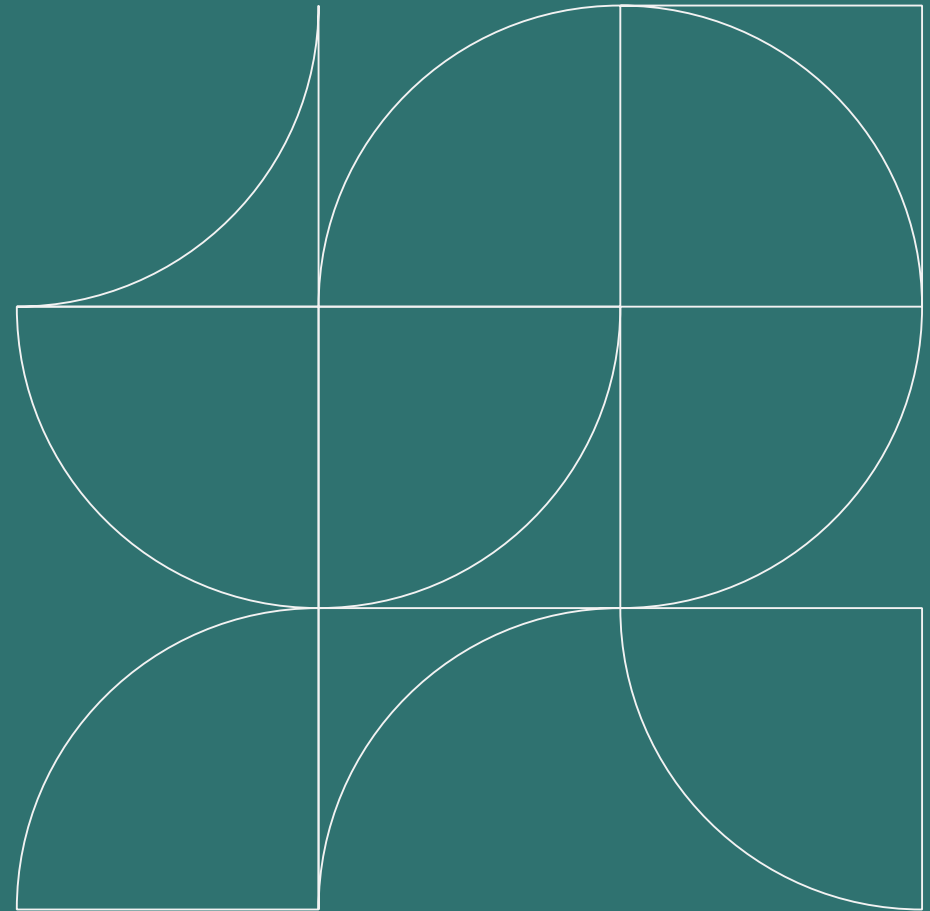
# ERGs Should First Align With Company DEI Strategy

- Approved ERGs should align with the values, mission and goals of the organization

- ERGs should not be formed unless there is a clear, defined reason for their formation

- Consider aligning with trends and opportunities in company data

## Goals that Align with Business Objectives, Mission and Purpose

- Promote a welcoming environment

- Increase feelings of belonging

- Social impact – community involvement

- External or customer impact

- Organizational desire to create community for underrepresented groups

- Align with company priorities, learn about priorities of employees

- Generating ideas for pipeline and recruiting efforts

# 4

# Best Practices for ERGs
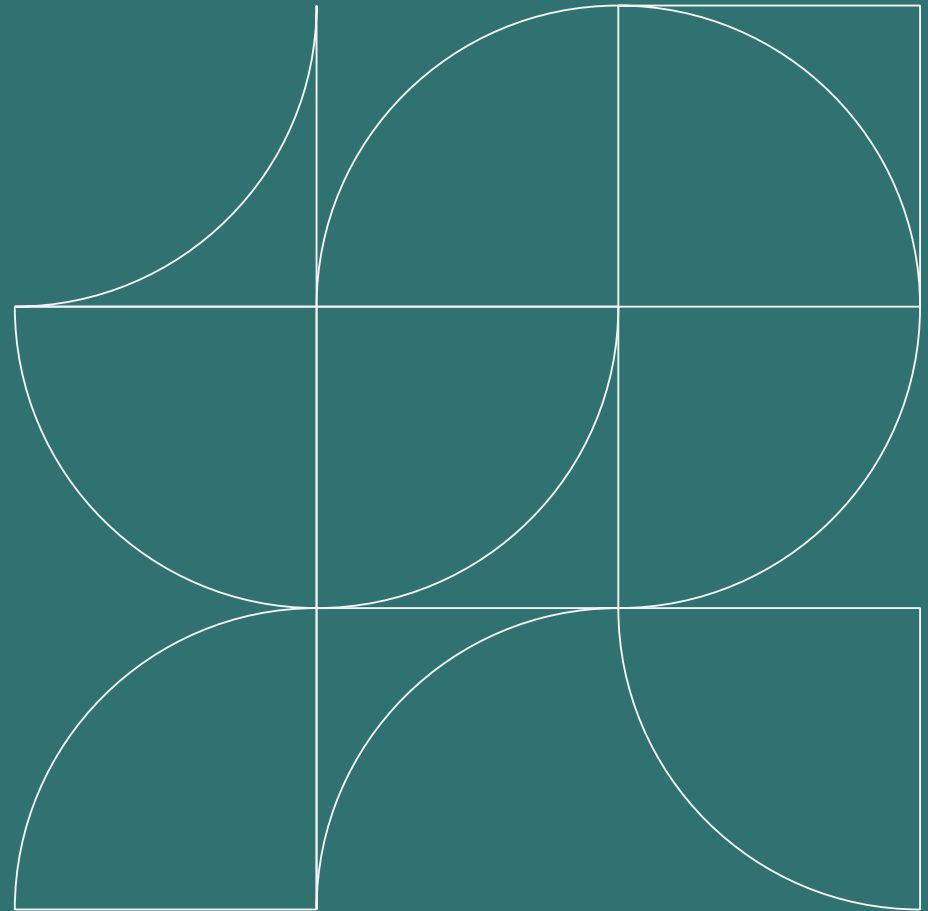
# Best Practices

**Publish Clear Guidelines for How ERGs are Established and Managed**

- policy statement (mission, purpose and inclusive membership)

- process for recognition & annual renewal

- responsibilities of group, leaders etc.

- exclusions

- review of ERG work as group and leaders

- process for renewal

- budget and/or funding request process

- employee participation rules

- incorporation of other key company policies

# Best Practices

**Managing the Labor Risk**

- The company can still solicit feedback from ERGs through mechanisms such as:
  - Suggestion boxes
  - Employee engagement surveys
  - Brainstorming groups

- Interactions between the ERG and management should by unilateral rather than bilateral
  - Making suggestions to management is okay
  - Requesting a meeting to discuss proposals to management is discouraged

- Stay aware of protected concerted activity, even for nonunion employers

**Best Practices**

## Other Key Topics & Recommendations

- ERG leader access to and use of EEO data
- Leader compensation, job duties and description
- Senior Sponsor(s) and/or Advisor(s)
- ERG leader training, including
  - labor risk mitigation
  - wage hour concerns
  - how to address employee complaints
- Manage carefully any request for "exclusive" meetings among group members

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# thank you

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