



THE EQUAL PROTECTION PROJECT
A Project of the Legal Insurrection Foundation
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BY EMAIL AND OVERNIGHT DELIVERY

Ryan Roslansky
Chief Executive Officer
LinkedIn Corporation
1000 West Maude Avenue
Sunnyvale, CA 94085

Blake Lawit, Esq.
Senior Vice President and General Counsel
LinkedIn Corporation
1000 West Maude Avenue
Sunnyvale, CA 94085

Re: LinkedIn's "Diversity In Recruiting" Feature Violates LinkedIn's Own Non-Discrimination Policies And Aids Unlawful Discrimination

Dear Messrs. Roslansky and Lawit:

We write on behalf of the Equal Protection Project ("EPP") of the Legal Insurrection Foundation, a non-profit that, among other things, seeks to ensure equal protection under the law, non-discrimination by the government and private entities, and enforcement of federal and state civil rights statutes.

We request that LinkedIn Corp. ("LinkedIn") disable the "Diversity in Recruiting" ("DIR") feature on its platform that utilizes the personal demographic information of LinkedIn users to "surface qualified members" in order to "diversify the group of candidates displayed to

recruiters from companies that have made public commitments to diversity, equity, and inclusion.”¹

For diversity in recruiting: LinkedIn may use your personal demographic information in recruiting features to surface qualified members that may diversify the group of candidates displayed to recruiters. This would include your profile among those shown to recruiters from companies that have made public commitments to diversity, equity, and inclusion. Your answers to these personal demographic questions are never directly shared with recruiters or companies. You can opt out of this use of your personal demographic information in your settings.

LinkedIn is making job candidates’ employment applications more visible to potential employers based on each candidate’s race, ethnicity, gender, gender identity and sexual orientation. As set forth below, enabling the use of such protected categories for employer hiring searches violates LinkedIn’s own non-discrimination policies and aids unlawful discriminatory hiring practices by employers. We call on LinkedIn to live up to its contractual and public promise of non-discrimination by disabling this pernicious feature.

LinkedIn’s Collection And Use Of Members’ Demographic Information

As shown in the screenshot below from LinkedIn’s website, LinkedIn states that the demographic data utilized through the DIR feature includes each LinkedIn user’s race and ethnicity, gender and gender identity and sexual orientation.²

Which of the following best describes your racial or ethnic identity?
Select all that apply

- Asian
- Black, including African American
- Hispanic, Latino/a or Latinx
- Middle Eastern or North African
- Native American or Alaska Native
- Pacific Islander, including Native Hawaiian
- White or Caucasian
- Prefer not to say

[+ Add other race or ethnicity](#)

¹ <https://tinyurl.com/yfpm4n2> [<https://archive.is/Rd2PV>] (accessed on April 21, 2023).

² <https://www.linkedin.com/mypreferences/d/demographic-info-copy> [<https://archive.is/bPH1O>] (accessed on April 24, 2023). Users must be logged in to the LinkedIn platform to view these screens in their native format.

Which of the following best describes your gender?

- Woman
- Man
- Nonbinary
- Prefer not to say
- Self describe

Do you identify as transgender?

- Yes
- No
- Prefer not to say

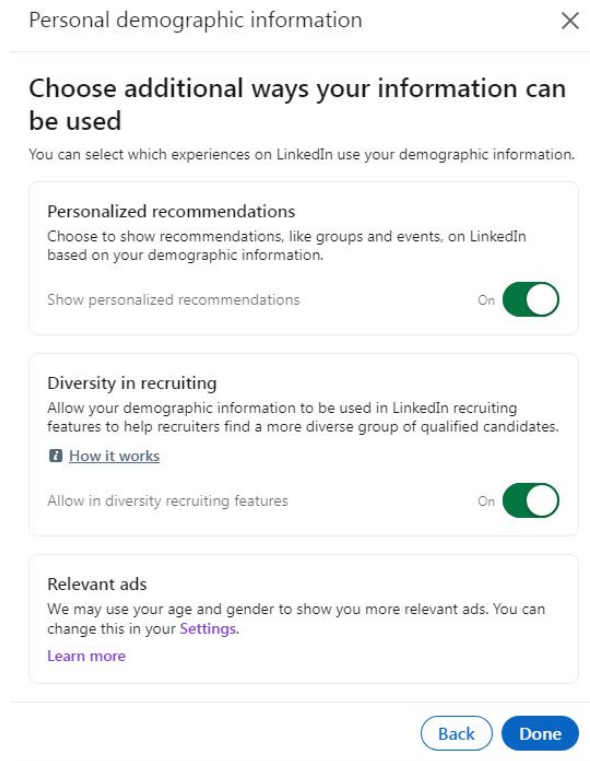
Which of the following best describe your sexual orientation?

Select all that apply

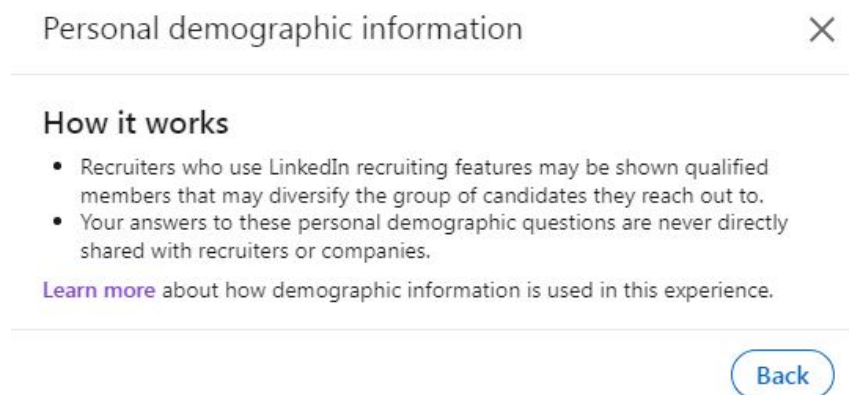
- Asexual or ace
- Bisexual or bi
- Gay
- Heterosexual or straight
- Lesbian
- Pansexual
- Queer
- Prefer not to say

[+ Add other sexual orientation](#)

According to LinkedIn, once a user's demographic information is provided to the platform, LinkedIn uses that data "to help recruiters find a more diverse group of qualified candidates."

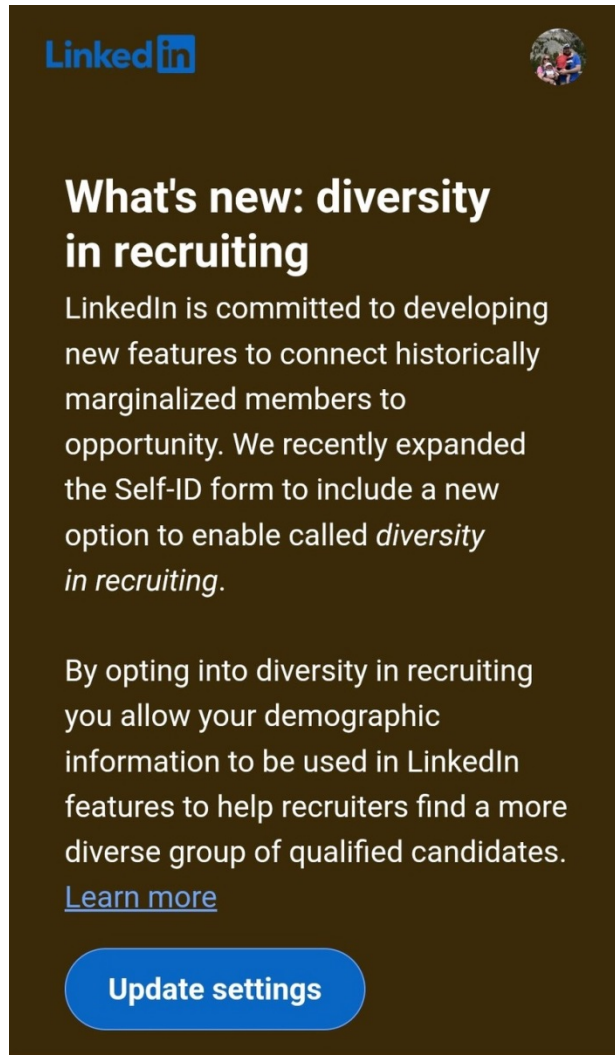


In explaining the DIR feature and “how it works,” LinkedIn explicitly states that job recruiters who use the feature “may be shown qualified members that may diversify the group of candidates they reach out to.” In other words, LinkedIn highlights the applications from candidates who meet its criteria for “diversity,” and throttles the visibility of applications from those who do not.



In a recent email reportedly sent by LinkedIn to its users, the platform admitted that by “diversity,” it means those members who have been “historically marginalized.”³

³ <https://tinyurl.com/34djzxd> [https://archive.is/YIyl] (accessed on April 23, 2023).

A dark brown rectangular card with the LinkedIn logo in the top left and a small circular profile picture in the top right. The main text is white and centered. At the bottom is a blue rounded button with white text.

What's new: diversity in recruiting

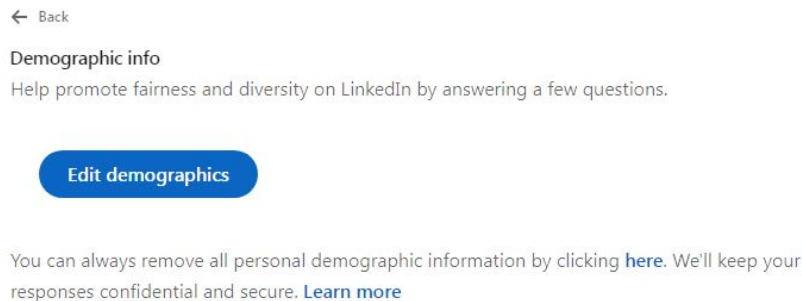
LinkedIn is committed to developing new features to connect historically marginalized members to opportunity. We recently expanded the Self-ID form to include a new option to enable called *diversity in recruiting*.

By opting into diversity in recruiting you allow your demographic information to be used in LinkedIn features to help recruiters find a more diverse group of qualified candidates.

[Learn more](#)

Update settings

LinkedIn asserts that it adopted the DIR feature to “help promote fairness and diversity” in the competition for jobs.

A screenshot of a LinkedIn settings page. It has a light gray background. At the top left is a back arrow and the word 'Back'. Below that is the heading 'Demographic info' and a sub-heading 'Help promote fairness and diversity on LinkedIn by answering a few questions.' In the center is a blue rounded button with white text that says 'Edit demographics'. At the bottom is a paragraph of text: 'You can always remove all personal demographic information by clicking [here](#). We'll keep your responses confidential and secure. [Learn more](#)'.

← Back

Demographic info
Help promote fairness and diversity on LinkedIn by answering a few questions.

Edit demographics

You can always remove all personal demographic information by clicking [here](#). We'll keep your responses confidential and secure. [Learn more](#)

LinkedIn also maintains that the DIR tool will use members’ demographic information to “identify and address potential bias” in hiring decisions by employers who use LinkedIn to find new employees.

Your demographic information

Your responses are kept confidential, secure, and private to you. We'll use your information to:

- Understand and improve how different people experience LinkedIn
- Identify and address potential bias
- Provide workforce insights on what we've learned

In reality, the DIR feature will not promote fairness or address bias, but will aid and encourage unlawful discrimination.

The DIR Feature Violates LinkedIn's Own Non-Discrimination Policies

In several places on LinkedIn's platform, the company commendably asserts a commitment to non-discrimination. It is reasonable to expect that LinkedIn will adhere to its own policies and the values it promises to its users.

For example, LinkedIn's policy regarding the substance of job listings that are advertised by third-party employers on the platform provides that "LinkedIn prohibits discrimination in job posts based on protected characteristics, including age, gender, gender identity, religion, ethnicity, race, national origin, disability, sexual orientation, and any other basis protected under law."⁴

Job post discrimination

Last updated: 5 months ago

LinkedIn prohibits discrimination in job posts based on protected characteristics, including age, gender, gender identity, religion, ethnicity, race, national origin, disability, sexual orientation, and any other basis protected under law; however, in a jurisdiction where it is legally permissible to do so, LinkedIn may permit language in posts expressing preference for members of certain groups historically disadvantaged in hiring in that location.

You can report any job post on LinkedIn that you believe may be discriminatory. We review jobs that have been flagged and if they are found to violate our policies, they will be removed.

In addition to our policies, job posts must also comply with applicable local laws and regulations. Job posters should consult local agencies and local legal counsel to understand applicable laws and regulations relating to discrimination. In some cases, practices allowed by local law may still be prohibited on LinkedIn.

And, as shown in the following screenshot, LinkedIn's "Professional Community Policies" webpage declares that the site prohibits content that "incites or threatens ...

⁴ <https://www.linkedin.com/help/linkedin/answer/a1335725> [https://archive.is/XeuXT] (accessed on April 21, 2023); <https://www.linkedin.com/legal/ads-policy> [https://archive.is/VIv4g] (accessed on April 21, 2023).

discriminatory action against individuals or groups because of their actual or perceived race, ethnicity, national origin, caste, gender, gender identity, sexual orientation, religious affiliation, age, or disability status.”⁵

Do not be hateful. We don't allow content that attacks, denigrates, intimidates, dehumanizes, incites or threatens hatred, violence, prejudicial or discriminatory action against individuals or groups because of their actual or perceived race, ethnicity, national origin, caste, gender, gender identity, sexual orientation, religious affiliation, age, or disability status. Hate groups are not permitted on LinkedIn. Do not use racial, religious, or other slurs that incite or promote hatred, or any other content intended to create division. Do not post or share content that denies a well-documented historical event such as the Holocaust or slavery in the United States.

LinkedIn’s Equal Employment Opportunity (“EEO”) statement also claims that the company stands firmly against discrimination in its own hiring decisions, asserting that it “considers qualified applicants without regard to race, color, religion, creed, gender, national origin, age, disability, veteran status, marital status, pregnancy, sex, gender expression or identity, sexual orientation, citizenship, or any other legally protected class.”⁶

Equal Employment Opportunity (EEO) Statements

US Equal Employment Opportunity Statement

LinkedIn is committed to diversity in its workforce and is proud to be an equal opportunity employer. LinkedIn considers qualified applicants without regard to race, color, religion, creed, gender, national origin, age, disability, veteran status, marital status, pregnancy, sex, gender expression or identity, sexual orientation, citizenship, or any other legally protected class. LinkedIn is an Affirmative Action and Equal Opportunity Employer as described in our [equal opportunity statement here](#).

LinkedIn is committed to offering an inclusive and accessible experience for all job seekers, including individuals with disabilities. Our goal is to foster an inclusive and accessible workplace where everyone has the opportunity to be successful.

LinkedIn’s EEO statement further provides that “each member of [its] leadership team strongly supports ... non-discrimination,” and that LinkedIn’s commitment to non-discrimination “applies across all of our employment policies and practices, from recruiting and hiring to training and career development.”⁷

⁵ <https://www.linkedin.com/legal/professional-community-policies> [https://archive.is/6MxhM] (accessed on April 24, 2023).

⁶ <https://tinyurl.com/ekccjaz8> [https://tinyurl.com/ekccjaz8] (accessed on April 21, 2023).

⁷ <https://tinyurl.com/4zftuf9> [https://archive.is/NP0wT] (accessed on April 23, 2023).



OUR COMMITMENT TO EQUAL EMPLOYMENT OPPORTUNITY

At LinkedIn, our vision is to create economic opportunity for every professional in the world, and that starts here, with our own employees. That's why each member of our leadership team strongly supports equal employment opportunity, non-discrimination, and our affirmative action programs.

Integrity is a core part of our culture, and LinkedIn is committed to equal employment opportunity for all qualified individuals -regardless of race, color, religion, creed, gender, national origin, age, disability, veteran status, marital status, pregnancy, sex, gender expression or identity, sexual orientation, citizenship, or any other legally protected class. This commitment applies across all of our employment policies and practices, from recruiting and hiring to training and career development.

This also means that we absolutely prohibit sexual, racial, religious, and all other forms of unlawful discrimination and harassment, as detailed in LinkedIn's Policy Prohibiting Harassment, Discrimination, and Retaliation. If you have any questions about our discrimination or harassment policies, we want to know about it. If you have other concerns, please reach out to your HR Business Partner, Employee Relations, or you may submit your concern anonymously via our Integrity Helpline at <https://app.convercent.com/en-us/LandingPage/39af0eee-9737-e411-80ef-00155d620d58> or 1-844-804-LNKD (5653) (find more information at [go/integrity](https://go.linkedin.com/integrity)). LinkedIn will not tolerate any intimidation, threats, or retaliation against anyone for reporting concerns in good faith, or for participating in any related investigation.

Given LinkedIn's repeated contractual commitments to non-discrimination and its public vow that "[i]ntegrity is a core part of [its] culture," LinkedIn's adoption, implementation and promotion of the DIR feature – which, as described below, can aid employers in purposefully engaging in unlawful discrimination in hiring – is particularly troubling.

The DIR Feature Enables Unlawful Discrimination

As you know, the law forbids discrimination based on numerous protected categories in every aspect of employment. Title VII of the Civil Rights Act of 1964 makes it unlawful for employers to discriminate because of "race, color, religion, sex, or national origin." 42 U. S. C. §2000e-2(a)(1). State and local laws across all of the jurisdictions where LinkedIn has an online presence are even more protective.

It is illegal for potential employers to engage in recruitment practices that deliberately discriminate on the basis of a protected status, but that is precisely what the DIR tool is designed to help employers do.⁸ The tool segregates the applicant pool into "diverse" and "non-diverse"

⁸ The only legally recognized exception is when employers establish "affirmative action" plans based on a historical imbalance or disparity in the workforce. *See Johnson v. Transp. Agency, Santa Clara Cnty., Cal.*, 480 U.S. 616 (1987). These plans are only permissible when (1) preferences are intended to "eliminate conspicuous racial imbalances in traditionally segregated job categories"; (2) the rights of nonminority employees are "not unnecessarily trammled"; and (3) the preferences are temporary in duration. *United Steelworkers of Am. v. Weber*, 443 U.S. 193 (1979). These requirements cannot be met here.

groups, and promotes the former over the latter. Employers who use LinkedIn's DIR function are well aware of its purpose and function because LinkedIn has explained it to them.

By using its online platform to facilitate discrimination against job applicants it deems "non-diverse" due to their race, gender, national origin other similar factors, LinkedIn places itself at legal jeopardy. Courts have held that where a non-employer discriminates against an employee, and the discrimination has the effect of restricting the employee's access to employment, the non-employer may be held liable for employment discrimination. *See Sibley Memorial Hospital v. Wilson*, 488 F.2d 1338 (D.C. Cir. 1973); *accord Association of Mexican-American Educators v. California*, 231 F.3d 572 (9th Cir. 2000); *Alexander v. Rush N. Shore Medical Ctr.*, 101 F.3d 487 (7th Cir. 1996); *Charlton v. Paramus Bd. of Educ.*, 25 F.3d 194, 202 (3d Cir. 1994); *Christopher v. Stouder Mem'l Hosp.*, 936 F.2d 870, 876-77 (6th Cir. 1991); *Pardazi v. Cullman Med. Ctr.*, 838 F.2d 1155, 1156 (11th Cir. 1988); *Shehadeh v. Chesapeake & Potomac Tel. Co.*, 595 F.2d 711, 722 (D.C. Cir. 1978); *Axness v. Aqreva LLC*, 118 F. Supp. 3d 1144, 1156 (D.S.D. 2015).

Indeed, the Ninth Circuit⁹ has held that an entity that is not the direct employer of a Title VII plaintiff nevertheless may be liable if it "interferes with [the] individual's employment opportunities with another employer." *Gomez v. Alexian Bros. Hosp.*, 698 F.2d 1019, 1021 (9th Cir. 1983) (quoting *Lutcher v. Musicians Union Local 47*, 633 F.2d 880, 883 n.3 (9th Cir. 1980)); *Association of Mexican-American Educators*, 231 F.3d at 580 n.4 (collecting cases). The Third Circuit¹⁰ also has adopted the "interference" theory, finding that a non-employer defendant can be held liable under Title VII if it "had the ability to directly affect the plaintiff's employment opportunities." *Charlton*, 25 F.3d at 198 n.4.

LinkedIn's User Agreement¹¹ also makes California law applicable to all legal disputes arising out of its members' use of the platform. Having chosen California law to apply, LinkedIn must abide by it – specifically, California's Fair Employment and Housing Act ("FEHA"), which makes it illegal for employers of five or more employees to discriminate against job applicants because of a protected category. Cal. Gov. Code §§ 12926(d), 12940 *et seq.* Notably, FEHA also makes it unlawful "to aid [or] abet" such unlawful discrimination by others. Cal. Gov't Code § 12940(i).

Putting aside any potential legal liability of LinkedIn, the DIR feature can only serve to empower employers to discriminate. That alone should suffice for LinkedIn to live up to its non-discrimination policies and legal obligations.

⁹ LinkedIn's corporate headquarters are located in Sunnyvale, CA, which is within the Ninth Circuit.

¹⁰ LinkedIn is incorporated in Delaware, which is within the Third Circuit.

¹¹ <https://www.linkedin.com/legal/user-agreement> [https://archive.is/VIIIX] (accessed on April 23, 2023).

LinkedIn Should Adhere To Its Own Policies And The Law And Eliminate The DIR Function

Information obtained and requested through the pre-employment process should be limited to information essential to determine if a person is qualified for the job – race, ethnicity, gender and sexual orientation are irrelevant to such determinations as a matter of LinkedIn policies and the law. Such discrimination simply cannot be justified as job-related or consistent with business necessity.

We call on LinkedIn to live up to its own non-discrimination policies and the law, and to immediately disable the “Diversity in Recruiting” feature. Please confirm LinkedIn’s intention to do so.

We appreciate your attention to this important matter. Please let us know LinkedIn’s intentions upon receipt of this letter.

Respectfully submitted,

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-and-

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