



# Are You Risking Legal Action because of Discrimination?

## Study Shines Light on Leadership Diversity

**Many employees never even reach the glass ceiling because of a broken rung much lower in the ladder. What is that rung, and how can you repair it?**

**W**omen and minorities still face many barriers in attaining leadership roles. According to a study by Pinsight, “Repairing the Broken Rung” (pinsight.com), you may need to rethink which employees you choose to promote to leadership roles in your organization. The study shows that today’s practices are often influenced by unconscious bias and result in unintentional discrimination.\*

Many organizations identify high-potential employees – those who show potential to grow into leadership roles – and prepare them for promotions by providing them with special assignments, networking opportunities, and executive coaching, which give them a clear advantage. If women and racial minorities are prevented from accessing these opportunities, they’re at a disadvantage.

\*Although this study focused on for-profits, there’s little doubt it’s applicable to nonprofits, as many studies have highlighted the huge disproportion of white men compared to women and people of color in nonprofit leadership.

Many assume there are fewer women and minority leaders because of lower qualifications among these subgroups. But this study makes it clear that a large part of the problem is the way organizations identify potential leaders and which employees they groom for promotion.

### How Do Organizations Identify High-Potentials?

When identifying high-potential employees for advancement, most organizations rely on the judgment of management. But ample research shows that managers aren’t the best judges of employees’ performance and potential. For example, one study found that over half of performance ratings actually reflected the person completing the ratings (the manager) rather than the employee being rated.

The study’s authors found that unconscious biases (stereotypes that people don’t know they have) have a great impact on managers’ perceptions of who has leadership potential. These biases are then reflected in disproportionately more white men than women and

minorities being identified as having potential for leadership and thus receiving special training.

## What Does the Research Show?

The Pinsight study finds that male managers are five times more likely to select men than women as high-potential employees. Female managers are two times more likely to choose men than women as high-potentials.

## Glossary of Terms

**Adverse impact:** another term for “unintentional discrimination,” which is illegal.

**Adverse-impact analysis:** a comparison of selection rates to see if any protected group is being disproportionately harmed.

**Broken rung:** term used to describe the inability of women and minorities to take the first step up the leadership ladder at rates equal to white men.

**Four-fifths rule:** the legal requirement that the selection rate for a protected group can't be less than 80% of that for the group with the highest selection rate.

**High-potential employees:** those who receive disproportionately more training and resources because of their perceived potential to grow into leadership roles in the organization.

**High-potential programs:** an array of experiences, resources, and opportunities, including but not limited to coaching, education, involvement in special projects, and opportunities to network, that are provided to high-potential employees.

**Intentional discrimination:** Employment discrimination that is done on purpose.

**Protected class:** Employees in a group that's qualified for protection under equal employment laws. Federal law protects employees from discrimination or harassment based on sex, race, age, disability, color, creed, national origin, or religion.

**Successor:** the person next in line to be promoted into a position once it becomes vacant. Most organizations invest a great deal into their succession plans – preparing people for key positions. As with high-potential selection, most organizations count on managers for these decisions, with only 8% of organizations relying on relatively more objective data.

**Unintentional discrimination:** Discrimination against members of protected groups that occurs even though the organization's policies may seem neutral. Even though unintended, it is illegal and punishable by law.

Pinsight's previous research found that women generally outperform men on several leadership skills most predictive of success in leadership positions. However, we see a pattern of gender disparity in high-potential programs. Compared to the distribution of gender in the employee population, we would expect half of high-potentials to be women. But in reality, there are almost twice as many men as women in high-potential programs.

## Is Unintentional Discrimination Putting You at Legal Risk?

Unintentional discrimination, also referred to as disparate impact, occurs when policies that appear to be neutral adversely affect a protected class (a group that's protected by federal law against discrimination because of sex, race, age, disability, color, creed, national origin, or religion).

Intentional discrimination, or disparate treatment, on the other hand, is deliberate employment discrimination. Testing only minority applicants for a particular skill or asking women a question that men aren't asked (about childcare arrangements, for example) is intentional discrimination.

Federal laws forbid both “disparate treatment” (intentional discrimination) and “disparate impact” (unintentional discrimination). Organizations face harsh punishment if they are found guilty of either type of discrimination.

The Pinsight study found unintentional discrimination against women in almost half of organizations and against racial minorities in two-thirds of organizations. Clearly, many organizations are exposing themselves to expensive, damaging lawsuits.

Classifying employees as high-potentials is a decision similar to hiring and should be scrutinized for potential discrimination in the same way. This involves comparing the selection rates for subgroups of employees depending on their demographic status – commonly referred to as adverse-impact analysis. A common rule used by courts to decide if discrimination has occurred is the four-fifths rule. According to the rule, discrimination exists if a protected group is selected at less than 80% of the selection ratio of a non-protected group.

According to the study, only 8% of organizations base promotion decisions on objective assessment data. Since subjective HR practices are apt to cause discrimination and lead to legal punishment, it's wise to adopt objective tests, such as standardized assessments of ability, personality, and other job-relevant attributes.

“If you don't use objective measures, you may invite lawsuits.”

## What Are the Study's Main Conclusions?

The study identified a vicious cycle that perpetuates itself:

- **Men hold** more managerial positions.
- **Men show unconscious bias** favoring white men when deciding who has leadership potential.
- **Managers** (mostly men) make decisions about who has leadership potential.
- **More men are identified** as high-potential employees.
- **More men receive access** to special training and resources designed to prepare them for faster promotion.

The study's authors urge you not to rely on managers to identify high-performing and high-potential employees. Instead, they say, you should turn to more objective measures of performance and potential. If you don't, you may invite lawsuits.

## What Steps Can You Take to Rectify This Problem?

The study's authors identified five steps that organizations can take to repair the broken rung and ensure fairness in the development of employees.

### 1. GET THE DATA.

Start by obtaining data about the practices you use to identify high-potential employees. Make sure you're using objective measures, not subjective judgments, to select these employees. Use the same rigor that you apply to hiring decisions. On a regular basis, calculate adverse impact against all protected groups. Review trends and best practices as well as legal cases to assure that you're aware of risks and trends.

### 2. ROLL OUT BIAS TRAINING FOR ALL.

Bias training is a good starting point, but understand that it's meant to increase awareness of the issue, not solve it. You can't train bias out of people. All humans use biases to save time and energy when making decisions. What training *can* do is increase awareness of what biases exist, how they can affect decision-making, and where to look for them in high-potential selection decisions. Because most people are reluctant to see their own biases, use data from your organization as evidence that even your managers show bias.

### 3. TURN UP THE RIGOR.

Examine your processes for identifying high-potential employees and successors across the entire leadership pipeline, from front-line managers to senior executive roles. Notice not just how those decisions are made but exactly how the processes are executed: Do managers write down names and submit them in a sealed envelope, or is there a transparent assessment in place? Are nomination criteria clearly defined? Do you have a validated list of


## “Women outperform men on crucial leadership skills”

the characteristics needed for employees to access high-potential programs?

### 4. IDENTIFY SELECTION CRITERIA.

Formulate the criteria for high-potential selection based on science, and insist that managers use these criteria during the nomination process. To create those criteria, ask: What attributes best predict success in leadership roles at your organization? Educate managers on these criteria and what performance should look like for future leaders. Use the criteria in the nomination and selection process, and ask managers to provide evidence that their candidates meet the criteria. Communicate the criteria to all employees to reinforce a culture of fair and consistent standards in selecting high-potential employees and in creating succession plans.

### 5. INTRODUCE BLIND AUDITIONS.

Help managers make better decisions by giving them more objective data about employees' readiness and future potential. Ask trained assessors with no relationship to the candidates to observe their performance. Seeing all employees in the same standardized situation and using a validated set of criteria, you will arrive at a more objective evaluation of their leadership potential and readiness. 

## Avoid Costly Lawsuits by Creating a Fair Workplace

Be scrupulous in rooting out discrimination that might cause legal liability. See articles such as these at [NonprofitWorld.org](https://www.nonprofitworld.org):

**The Most Likely Lawsuits – & How to Protect Yourself** (Vol. 19, No. 1)

**Fighting Harassment & Improving Inclusion** (Vol. 36, No. 2)

**The Need for Anti-Bias Policies** (Vol. 22, No. 5)

**How to Accommodate Disabilities under ADA** (Vol. 18, No. 5)

**Where to Find Free Legal Assistance** (Vol. 26, No. 2)

**The Failure of Diversity Training** (Vol. 18, No. 3)

**Cultural Competence: What Does It Mean for You?** (Vol. 26, No. 5)

**Don't Be Sued for Negligent Hiring** (Vol. 21, No. 3)

**Creating an Inclusive Workforce** (Vol. 24, No. 4)

**Training Programs Need More than Good Information** (Vol. 21, No. 2)