

Diversity Monitoring Survey Checklist - United States



1. In your jurisdiction, is an employer permitted to request data for the purposes of monitoring diversity?	2. In what form is it permitted to capture the data?	3. What data is permitted to be captured?	4. How should the data be stored and accessed?	5. Are there time limits on retention of data?	6. Are there any other specific rules which apply? eg relating to intra-group cross-border transfers of such data	7. Any other comments
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Alaska

Miller Nash

Yes – applicants and employees	<ul style="list-style-type: none"> •By individual’s name •Anonymised •Pseudonymised •Survey conducted by a third party, employer would see only aggregated data 	<ul style="list-style-type: none"> •Gender •Sexual orientation •Ethnic origin •Religion •Disability •Age •Socioeconomic status •Social mobility •Familial/Parental status 	<p><i>Storage</i></p> <p>Must be stored separately from other data.</p> <p><i>Access to underlying data</i></p> <p>Only designated employees</p>	No	Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.	N/A
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Arizona

Polsinelli

Yes – applicants and employees	<ul style="list-style-type: none"> •By individual’s name •Anonymised 	<ul style="list-style-type: none"> •Gender •Sexual orientation •Ethnic origin •Religion •Disability •Age •Socioeconomic status •Social mobility •Familial/Parental status •Employers are not prohibited from requesting that employees voluntarily provide any diversity information that the employee may be willing to share and which may be relevant to the employer’s diversity and inclusion efforts; however, this information cannot be used as the basis for any employment decisions. 	<p><i>Storage</i></p> <p>Must be stored separately from other data.</p> <p><i>Access to underlying data</i></p> <p>Only designated employees</p>	Yes. Data must be maintained for at least one year following an employee’s separation from employment.	Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.	Diversity surveys are common and well accepted; provided that they are conducted on a voluntary basis.
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California

Polsinelli

No	N/A	N/A	<p><i>Storage</i></p> <p>N/A</p> <p><i>Access to underlying data</i></p> <p>N/A</p>	N/A	<p>Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.</p>	<p>The Fair Employment and Housing Act (FEHA) prohibits any non-job-related inquiries of applicants or employees, either verbally or through the use of an application form, that express directly or indirectly a limitation, specification or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, sex, sexual orientation, gender identity or expression, military or veteran status.</p>
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Colorado

Polsinelli

Yes – applicants and employees

- By individual's name
- Anonymised

- Gender
- Sexual orientation
- Ethnic origin
- Religion
- Disability
- Age
- Socioeconomic status
- Social mobility
- Familial/Parental status
- Employers are not prohibited from requesting that employees voluntarily provide any diversity information that the employee may be willing to share and which may be relevant to the employer's diversity and inclusion efforts; however, this information cannot be used as the basis for any employment decisions.

Storage

Must be stored separately from other data.

Access to underlying data

Only designated employees

Yes. Data must be maintained for at least one year following an employee's separation from employment.

Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.

Diversity surveys are common and well accepted; provided that they are conducted on a voluntary basis.

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Florida

Holland & Knight

Yes – applicants and employees

- By individual's name
- Anonymised
- Pseudonymised
- Survey conducted by a third party, employer would see only aggregated data

- Gender
- Sexual orientation
- Ethnic origin
- Religion
- Disability
- Age
- Socioeconomic status
- Social mobility
- Familial/Parental status

Storage

No restrictions on where data are stored.

Access to underlying data

Only designated employees

No

Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.

Diversity surveys are common.

Georgia

Holland & Knight

Yes – applicants and employees

- By individual's name
- Anonymised
- Pseudonymised
- Survey conducted by a third party, employer would see only aggregated data

- Gender
- Sexual orientation
- Ethnic origin
- Religion
- Disability
- Age
- Socioeconomic status
- Social mobility
- Familial/Parental status

Storage

No restrictions on where data are stored.

Access to underlying data

No restrictions.

No

Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.

N/A

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Illinois

Duane Morris

Yes – applicants and employees	Anonymised	<ul style="list-style-type: none"> •Gender •Sexual orientation •Ethnic origin •Disability 	<p><i>Storage</i></p> <p>Must be stored separately from other data.</p> <p><i>Access to underlying data</i></p> <p>Only designated employees</p>	Yes. A minimum of 3 years.	Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.	Diversity surveys are common.
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Kansas

Polsinelli

Yes – applicants and employees	<ul style="list-style-type: none"> •By individual's name •Anonymised 	<ul style="list-style-type: none"> •Gender •Sexual orientation •Ethnic origin •Religion •Disability •Age •Socioeconomic status •Social mobility •Familial/Parental status •Employers are not prohibited from requesting that employees voluntarily provide any diversity information that the employee may be willing to share and which may be relevant to the employer's diversity and inclusion efforts; however, this information cannot be used as the basis for any employment decisions. 	<p><i>Storage</i></p> <p>Must be stored separately from other data.</p> <p><i>Access to underlying data</i></p> <p>Only designated employees</p>	Yes. Data must be maintained for at least one year following an employee's separation from employment.	Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.	Diversity surveys are common and well accepted; provided that they are conducted on a voluntary basis.
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Maryland

Duane Morris

Yes – applicants and employees	Anonymised	<ul style="list-style-type: none"> •Gender •Sexual orientation •Ethnic origin •Disability 	<p><i>Storage</i></p> <p>Must be stored separately from other data.</p> <p><i>Access to underlying data</i></p> <p>Only designated employees</p>	Yes. A minimum of 3 years.	Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.	Diversity surveys are common.
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Minnesota

Lathrop GPM

Yes – employees only	By individual's name	<ul style="list-style-type: none"> •Gender •Ethnic origin 	<p><i>Storage</i></p> <p>No restrictions on where data are stored.</p> <p><i>Access to underlying data</i></p> <p>Only designated employees</p>	No	Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.	N/A
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7. Any other comments

Missouri

Polsinelli

Yes – applicants and employees

- By individual's name
- Anonymised

- Gender
- Sexual orientation
- Ethnic origin
- Religion
- Disability
- Age
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- Employers are not prohibited from requesting that employees voluntarily provide any diversity information that the employee may be willing to share and which may be relevant to the employer's diversity and inclusion efforts; however, this information cannot be used as the basis for any employment decisions.

Storage

Must be stored separately from other data.

Access to underlying data

Only designated employees

Yes. Data must be maintained for at least one year following an employee's separation from employment.

Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.

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New Jersey

Duane Morris

Yes – applicants and employees	Anonymised	<ul style="list-style-type: none"> •Gender •Sexual orientation •Ethnic origin •Disability 	<p><i>Storage</i></p> <p>Must be stored separately from other data.</p> <p><i>Access to underlying data</i></p> <p>Only designated employees</p>	Yes. A minimum of 3 years.	Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.	Diversity surveys are common.
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New York

Holland & Knight

<ul style="list-style-type: none"> •Yes – applicants and employees •Only on a voluntary basis that specifies it is voluntary. 	<ul style="list-style-type: none"> •By individual's name •Anonymised •Pseudonymised •Survey conducted by a third party, employer would see only aggregated data 	<ul style="list-style-type: none"> •Gender •Sexual orientation •Ethnic origin •Religion •Disability •Age •Socioeconomic status •Social mobility •Any and all information gathered in this area would have to be done purely on a voluntary basis. It is not recommended to gather information on familial or parental status. 	<p><i>Storage</i></p> <p>Must be stored separately from other data.</p> <p><i>Access to underlying data</i></p> <p>Only designated employees</p>	Yes, although the precise length is not clear under state law which simply requires that data must be disposed of within “a reasonable amount of time”.	It is not clear under state law. No NY-specific laws on cross-border data transfers. Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.	Any and all information gathered in this area would have to be done purely on a voluntary basis and nothing other than race, gender, sexual orientation, national origin, disability, and current or former military status can be gathered.
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Oregon

Miller Nash

Yes – applicants and employees	<ul style="list-style-type: none"> •By individual’s name •Anonymised •Pseudonymised •Survey conducted by a third party, employer would see only aggregated data 	<ul style="list-style-type: none"> •Gender •Sexual orientation •Ethnic origin •Religion •Disability •Age •Socioeconomic status •Social mobility •Familial/Parental status 	<p><i>Storage</i></p> <p>No restrictions on where data are stored.</p> <p><i>Access to underlying data</i></p> <p>Only designated employees</p>	No	Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.	There are restrictions on the types of questions employers can ask when hiring an applicant, and information employers can require employees to provide. Employees should not be required to disclose: protected class status, salary/pay history, credit history, current employment status; and criminal convictions.
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Pennsylvania

Duane Morris

Yes – applicants and employees	Anonymised	<ul style="list-style-type: none"> •Gender •Sexual orientation •Ethnic origin •Disability 	<p><i>Storage</i></p> <p>Must be stored separately from other data.</p> <p><i>Access to underlying data</i></p> <p>Only designated employees</p>	Yes. A minimum of 3 years.	Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.	Diversity surveys are common.
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Texas

Carrington Coleman

Yes – applicants and employees	<ul style="list-style-type: none"> •By individual's name •Anonymised •Pseudonymised •Survey conducted by a third party, employer would see only aggregated data 	<ul style="list-style-type: none"> •Gender •Sexual orientation •Ethnic origin •Religion •Disability •Age •Socioeconomic status •Social mobility •Familial/Parental status 	<p><i>Storage</i></p> <p>Must be stored separately from other data.</p> <p><i>Access to underlying data</i></p> <p>Only designated employees</p>	Yes. In general, private employers must retain personnel and employment records for one year.	Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.	Employers should consider keeping results anonymous to encourage employees to answer truthfully.
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Washington

Miller Nash

Yes – applicants and employees	<ul style="list-style-type: none"> •By individual's name •Anonymised •Pseudonymised •Survey conducted by a third party, employer would see only aggregated data 	<ul style="list-style-type: none"> •Gender •Sexual orientation •Ethnic origin •Religion •Disability •Age •Socioeconomic status •Social mobility •Familial/Parental status 	<p><i>Storage</i></p> <p>Must be stored separately from other data.</p> <p><i>Access to underlying data</i></p> <ul style="list-style-type: none"> •Only designated employees •Washington law requires that the data be stored in a manner accessible only on a need to know basis. 	<ul style="list-style-type: none"> •Yes •EEO Data Forms should be retained for the period of termination plus 3 years. WA is less restrictive so best practice is to follow the federal guidelines. 	Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.	N/A
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Washington D.C.

Lathrop GPM

Yes – employees only	By individual's name	<ul style="list-style-type: none"> •Gender •Ethnic origin 	<p><i>Storage</i></p> <p>No restrictions on where data are stored.</p> <p><i>Access to underlying data</i></p> <p>Only designated employees</p>	Yes. Minimum of three years or the prevailing federal standard.	Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.	N/A
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Wisconsin

Lathrop GPM

Yes – employees only	By individual's name	<ul style="list-style-type: none"> •Gender •Sexual orientation •Ethnic origin •Religion •Disability •Age •Familial/Parental status 	<p><i>Storage</i></p> <p>No restrictions on where data are stored.</p> <p><i>Access to underlying data</i></p> <p>Only designated employees</p>	Yes. Minimum of three years.	Federal law requires all large employers (100+ employees) to collect and report race/ethnicity and gender data. There are also special rules which apply in cases involving affirmative action.	N/A
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Disclaimer:

The information in the Multilaw Checklist for Monitoring Staff Data provides a general overview at the time of publication and is not intended to be a comprehensive review of all legal developments nor should it be taken as opinion or legal advice on the matters covered. It is for general information purposes only and readers should take legal advice from a Multilaw member firm.