



How to Pursue Your DEI Goals Without Putting a Target on Your Back

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An Initiative of Equality Action Center @ UC Law SF



Legal Disclaimer*

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The Challenge*

- At least 4 Executive Orders address DEI
- Each federal agency to identify 9 large employers as targets
- AG to build “strategic plan” and ID sectors of concern
- OFCCP re-framed; EEOC changing priorities on SOGI
- Federal contractors
 - Discontinue race, gender “affirmative action”
 - Must certify compliance with all federal EEO laws as “material” to contract/grant, and, no unlawful DEI
 - Possible False Claims Act liability



Legal compliance vs. other risks*

- Core equal employment opportunity laws have not changed
 - Has always been illegal to make an employment decision based on race and gender – not what most DEI programs do!
- Private employers have a First Amendment right to free speech, including on DEI (conservative panel of 11th Circuit)
- Attention from federal government, AGs, advocacy groups & more

No wonder people are worried!*

- Practical first steps
 - Don't react too quickly!
 - Stay true to your company culture and talent
- Legal first steps
 - Review applicable policies & communications
 - Focus on details of programs & evolve!

Many less risky approaches to DEI are also the most likely to produce year-over-year progress and results

Agenda*

- Messaging
- Organizational development initiatives
- Professional development initiatives
- Evidence-based business goals
- Additional resources

Messaging and what to name your initiative*

Messaging: Don't fall silent*

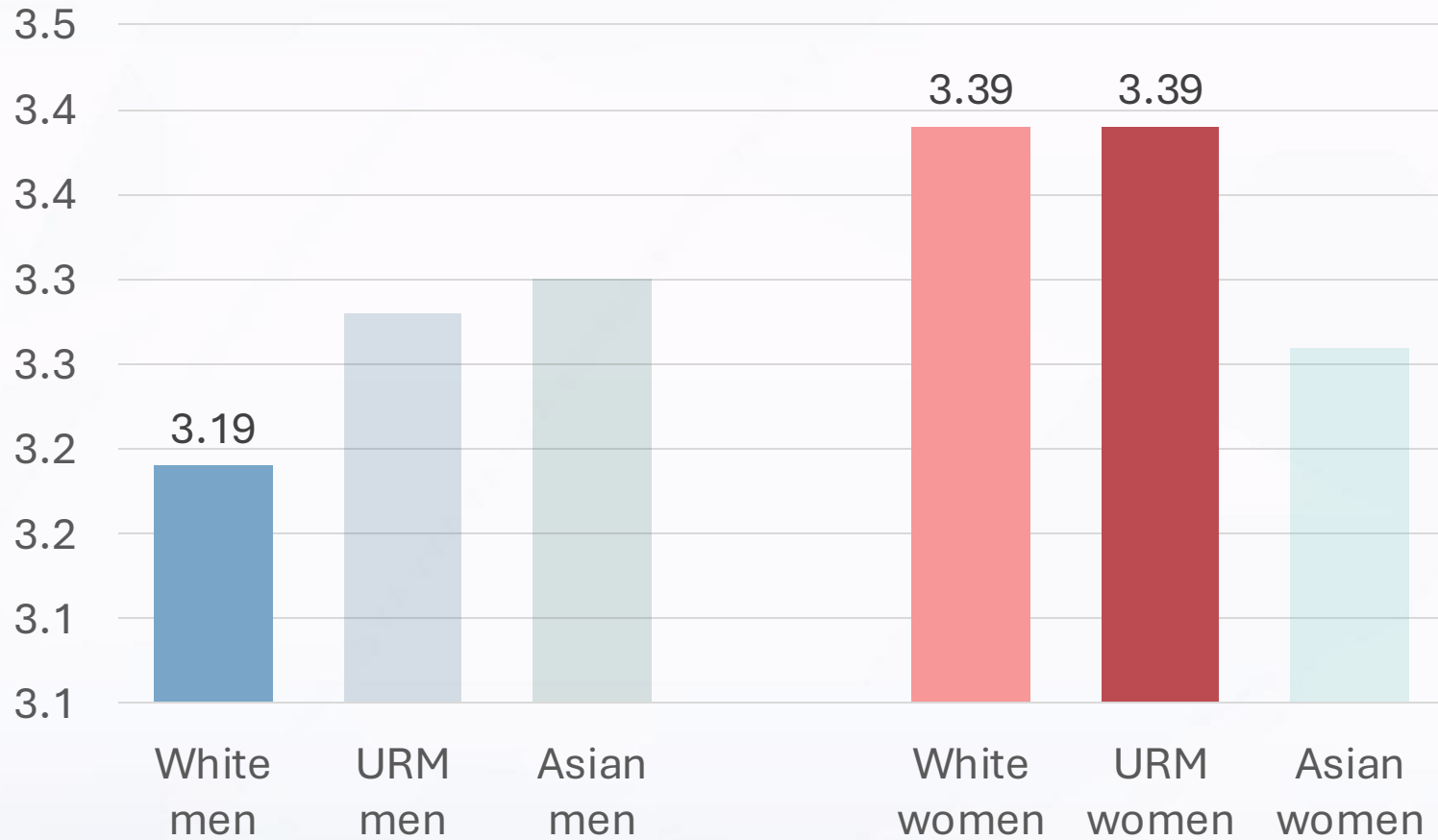
- Think about external and internal audiences
- Core messages:
 - DEIBA is about opportunity for all
 - Merit based opportunity can also prioritize inclusion to ensure all employees have an opportunity to succeed without regard to race, sex, or other protected status

Messaging: Meritocracy/Culture Initiative

- Culture Initiative = accepted corporate language
- Meritocracy Initiative
 - Mirrors the administration's rhetoric

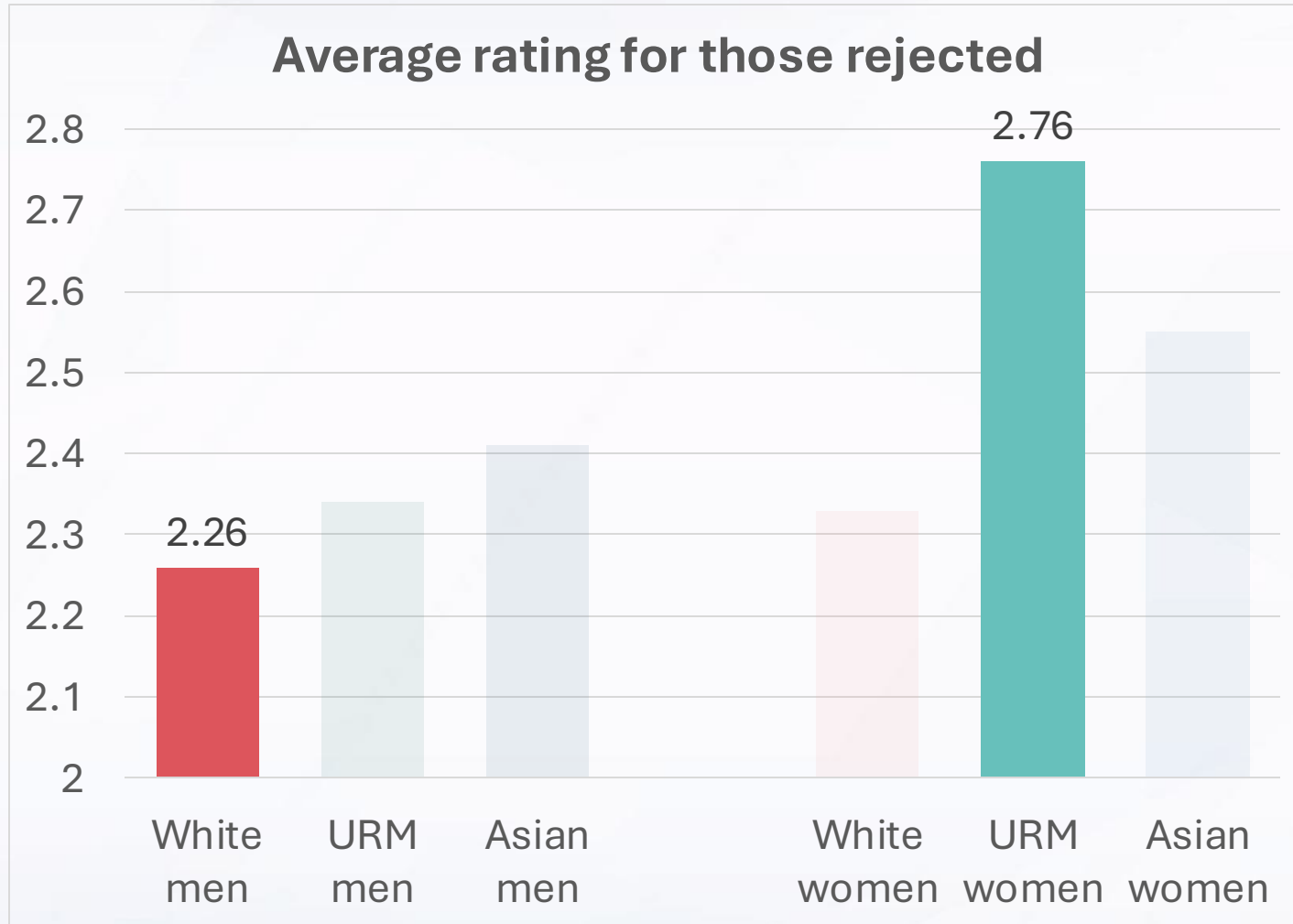
“The injection of diversity, equity, and inclusion (DEI) into our institutions has corrupted them by replacing hard work, merit, and equality with a divisive and dangerous preferential hierarchy” (EO)
 - It's true! Tech start up: found it was hiring white men with lower rankings more than any other group

Average rating for those who received offers



White men getting offers with lower scores than all other groups.

White women and URM women need to have much higher scores to get offers



URM women rejected with higher scores than all other groups.

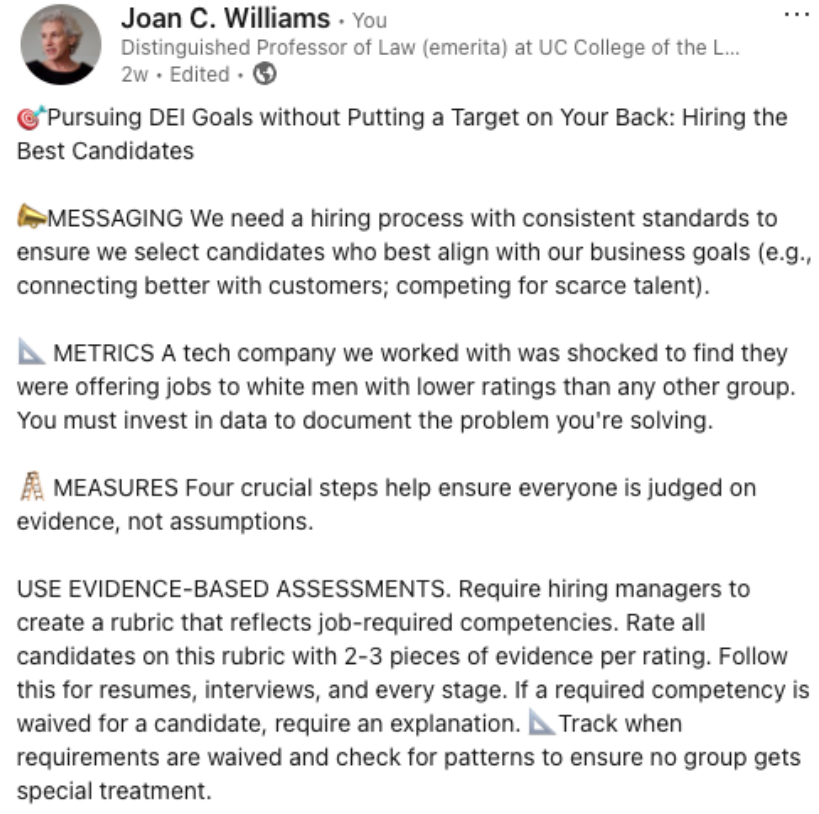
Discrepancy greatest between *White men* and *URM women*.


Messaging: Lowest risk


- Organizational and Professional Development
 - Potential cost of mainstreaming: lose focus
- Research shows that having DEI as part of someone's job is important
 - So, if you take this path, make it part of someone's job – and mean it


How to message without referencing DEI?


- **MESSAGING:** We need a hiring process that has consistent standards to ensure we select the candidates who best align with our business goals (e.g., connect better with our customers)





Joan C. Williams · You
Distinguished Professor of Law (emerita) at UC College of the L...
2w · Edited · 

 Pursuing DEI Goals without Putting a Target on Your Back: Hiring the Best Candidates

 **MESSAGING** We need a hiring process with consistent standards to ensure we select candidates who best align with our business goals (e.g., connecting better with customers; competing for scarce talent).

 **METRICS** A tech company we worked with was shocked to find they were offering jobs to white men with lower ratings than any other group. You must invest in data to document the problem you're solving.

 **MEASURES** Four crucial steps help ensure everyone is judged on evidence, not assumptions.

USE EVIDENCE-BASED ASSESSMENTS. Require hiring managers to create a rubric that reflects job-required competencies. Rate all candidates on this rubric with 2-3 pieces of evidence per rating. Follow this for resumes, interviews, and every stage. If a required competency is waived for a candidate, require an explanation.  Track when requirements are waived and check for patterns to ensure no group gets special treatment.

Organizational development initiatives*

Changing business systems*

- Initiatives to eliminate bias in hiring, performance evaluations, access to opportunities and other workplace systems
- Least risky path—also most likely to be effective in achieving year-over-year progress towards DEI goals

Acting Chair Andrea Lucas*

Has provided the most concrete
guidance to date on how companies
should proceed

Why what she says matters



Acting EEOC Chair Andrea Lucas*

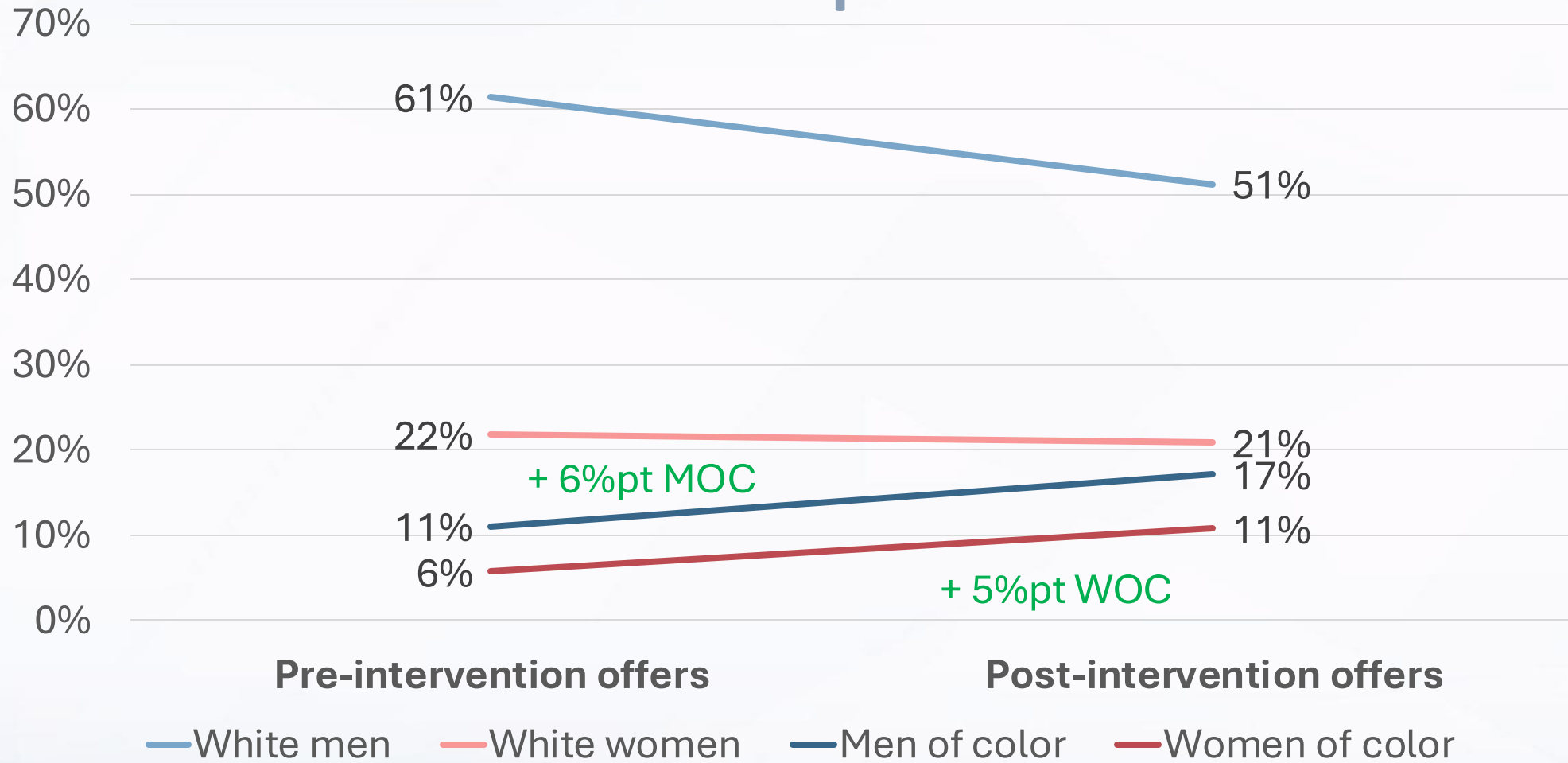
- Do **audits** to identify areas of potential EEO concern
- **Standardize** interview questions, promotion, hiring policies
- **Correct** for known trouble areas like “culture fit”

22 experiments inside companies

What we did:

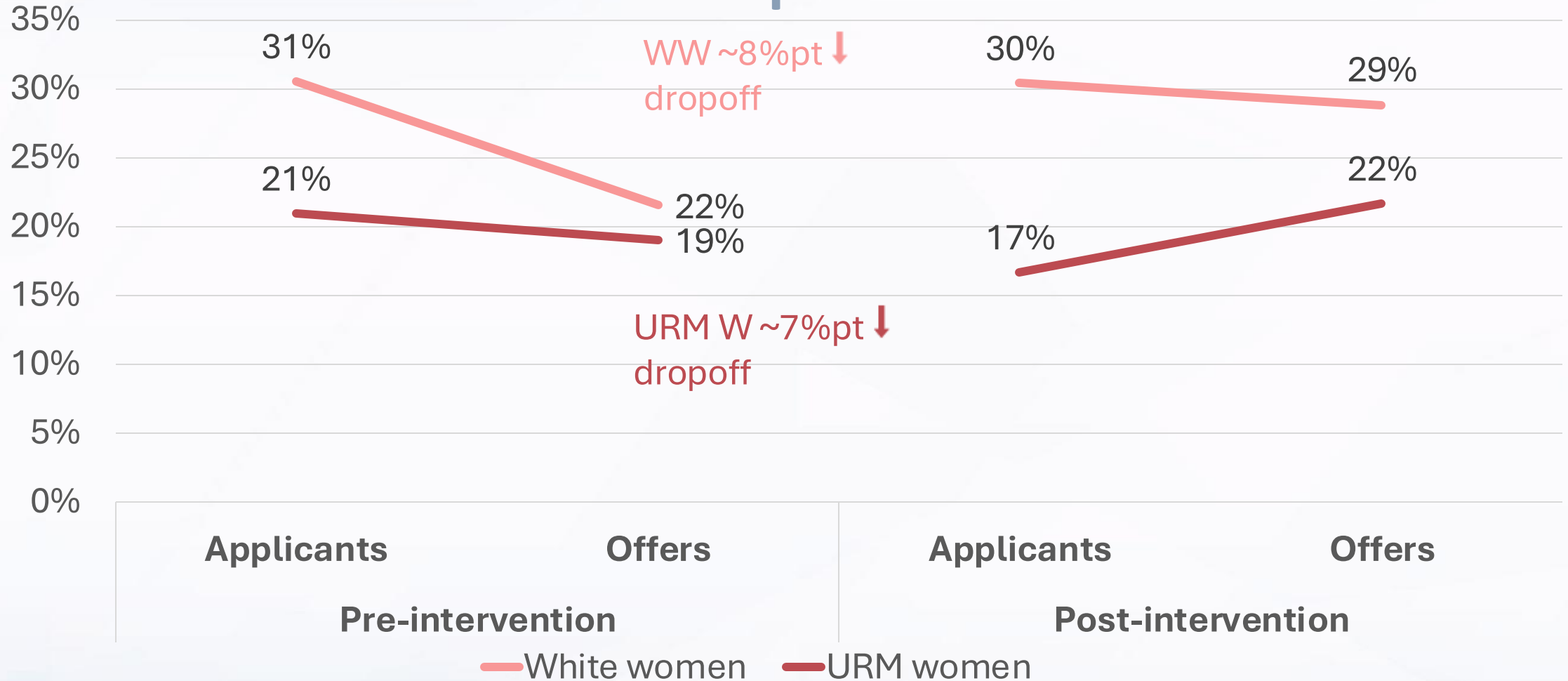
- **Audits** to identify trouble spots
- **Standardize**: rate people competency by competency on a rubric
- **Correct** for known trouble areas like “culture fit,” potential, personality

Bias Interrupters work



Manufacturing company

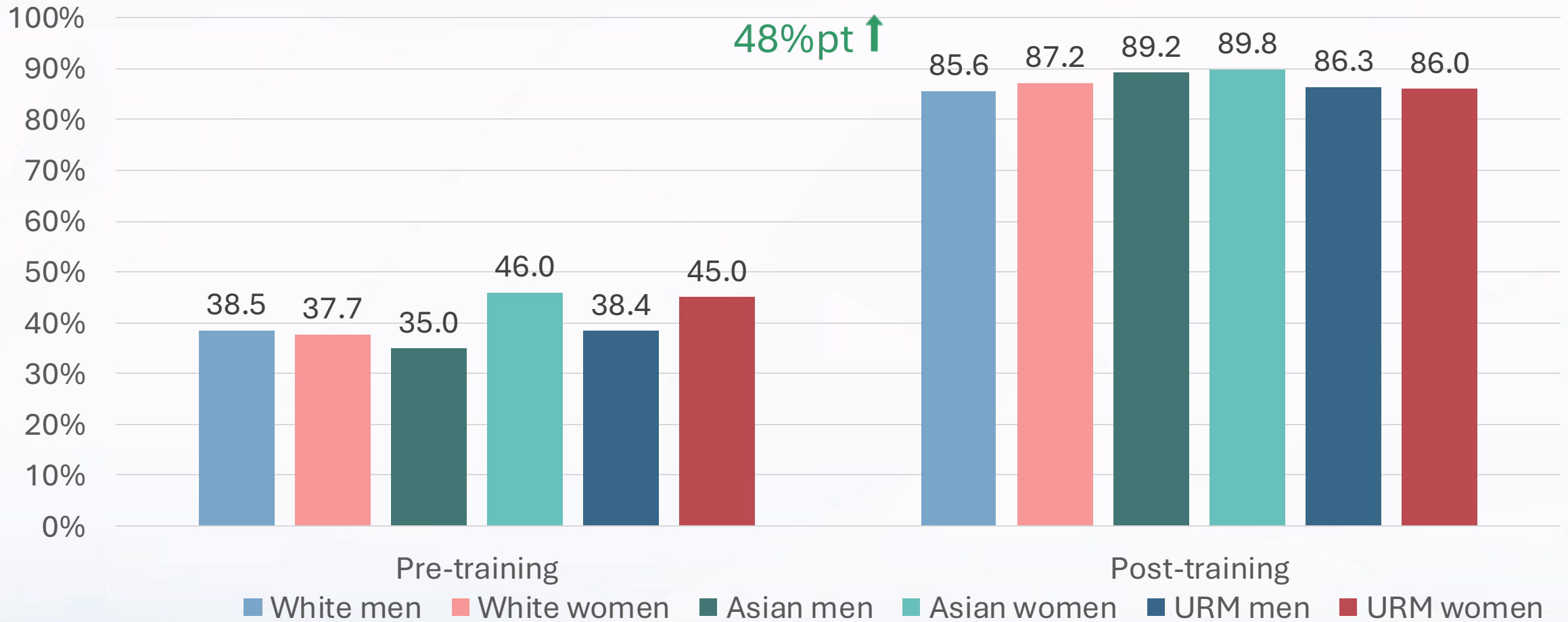
Bias Interrupters work



Tech startup

Bias Interrupters work

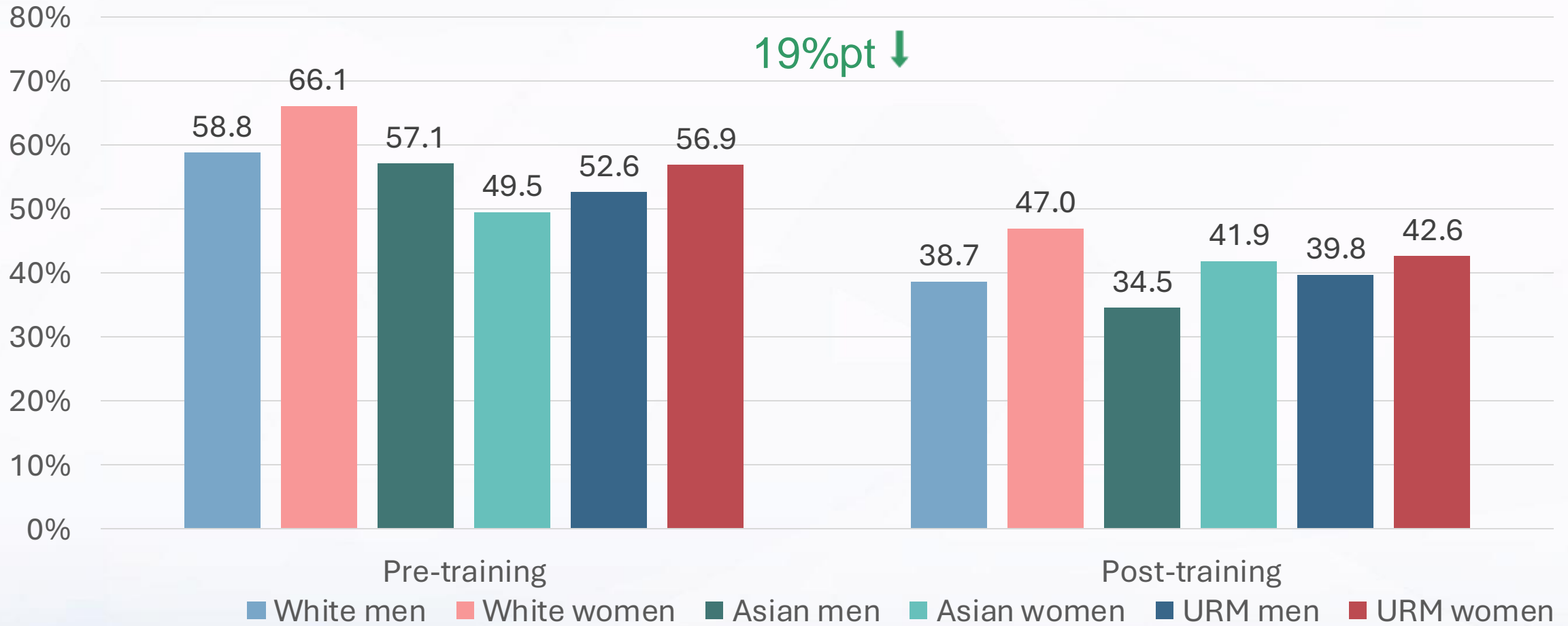
Evidence-based feedback



Aggregated data from two companies

Bias Interrupters work

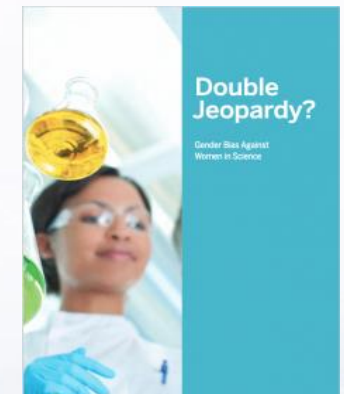
Personality



Aggregated data from two companies

Fair access to opportunities

- Across industries, 80-88% of white men report fair access to opportunities...as low as 34% for WOC
- Women report more non-promotable and administrative work—the “office housework”



Standardize: Tasking Tool

Tasking Tool

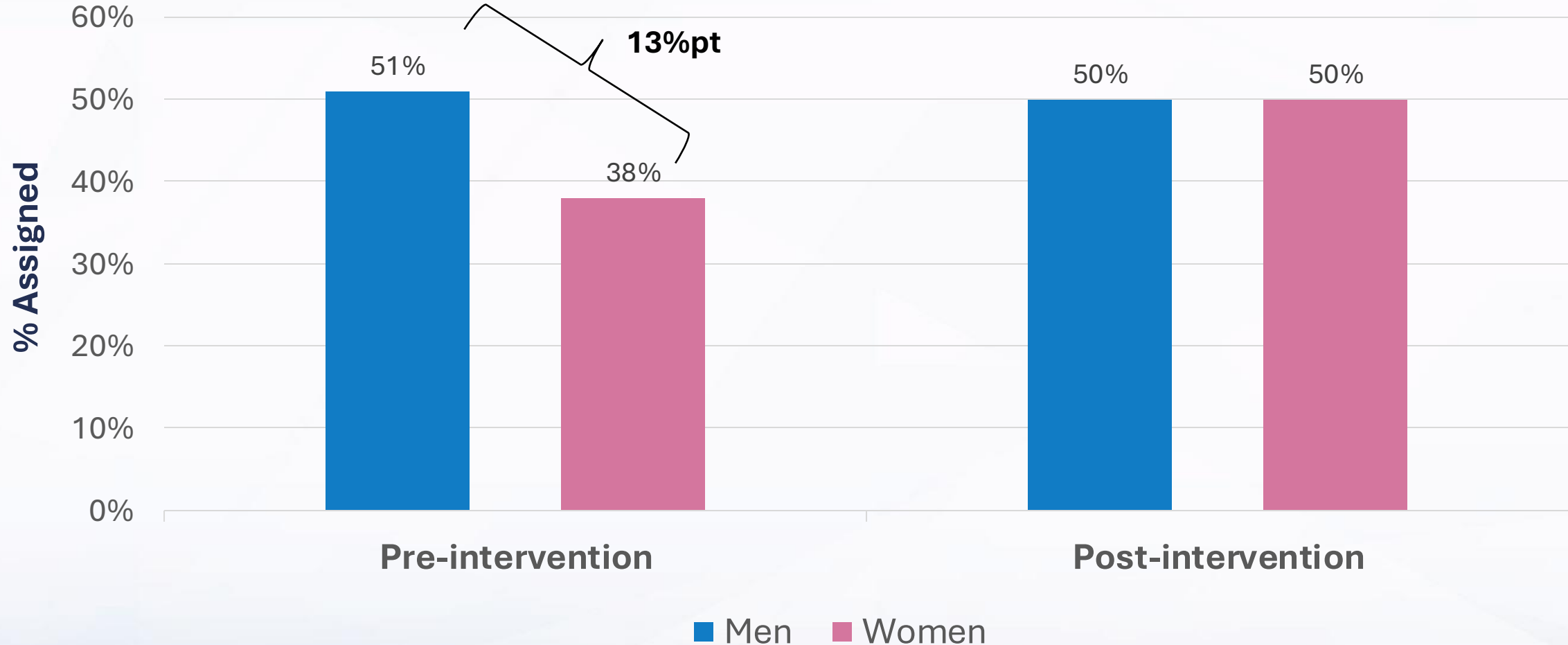
Please match up your direct reports with the opportunities they have worked on during the past month by checking the corresponding boxes.

Core Technical Products

	Rachel	Asma	Joan	Raafiya
Novel analyses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tool development	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Research	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Bias Interrupters work

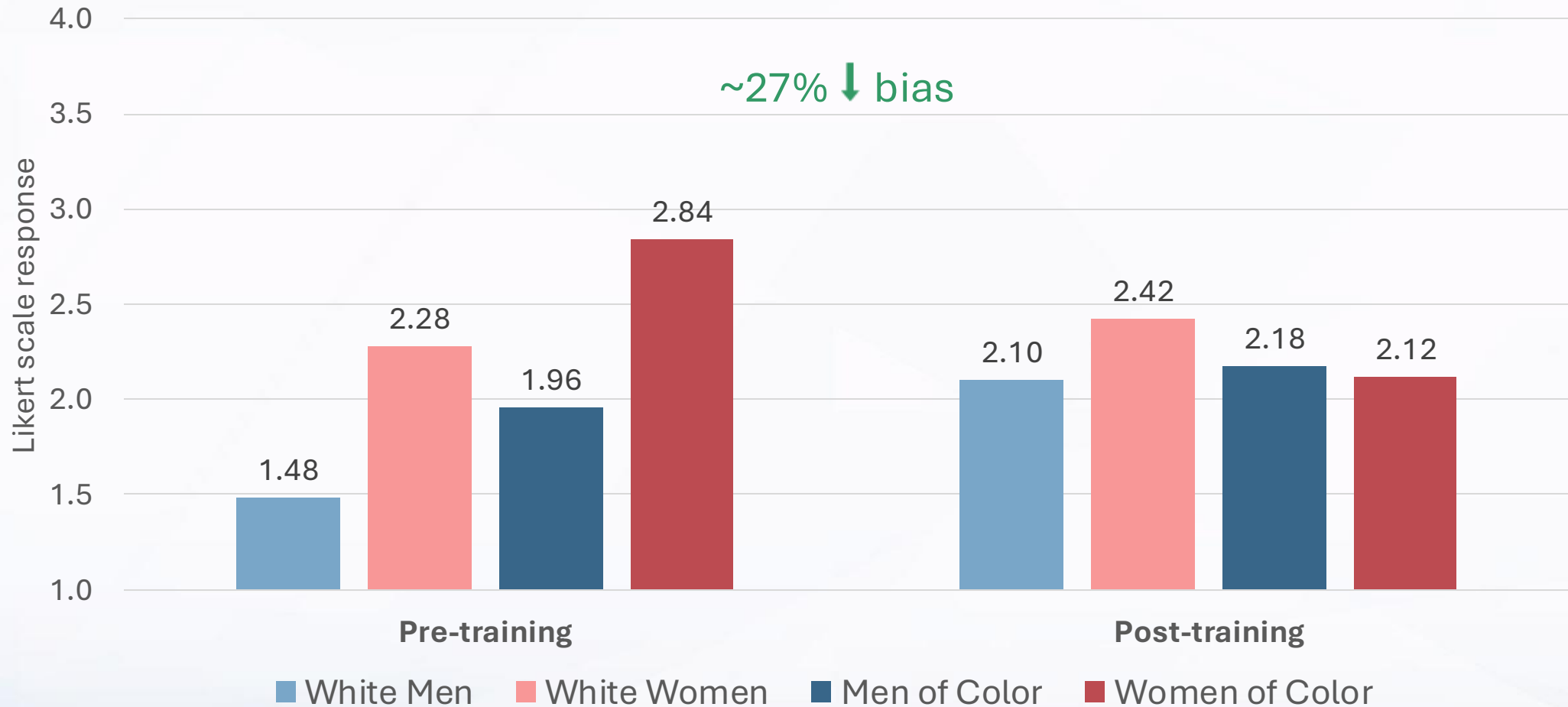
Core Technical Products



Department A of an energy company

Correct for known trouble areas

More literal housework: planning parties, cleaning up, ordering food



Professional services company

Diversity goals

- Are they risky?*
- Quotas have always been illegal
- Most corporate diversity aspirational goals are very different from quotas
- Even lawful diversity goals may be targeted in current environment
- Are they effective?
- Not effective at increasing diversity on their own

Diverse slate requirements

- Are they risky?*
- Bound to draw fire in today's environment
- Level of risk depends on how a company implements program
- Are they effective?
- Not necessarily effective: study shows that “Rooney Rule” targeted wrong level of the organization—and often gamed

DEI trainings

- Are they risky?*
- What types of trainings are higher risk
- Which are lower risk
- Again: think about your internal as well as your external audience

DEI trainings

- Are they effective?
 - EAC's bias workshop decreases bias against WOC by 24%
 - Build bias reduction across learning and development curriculum (e.g. "Fair and effective hiring")
 - Focus on a range of groups (incl. 1st gen): two-pager sharply reduced bias against women and POC

BIAS INTERRUPTERS *meritocracy now!*

BIAS INTERRUPTERS FOR HIRING & RECRUITING *Identifying Bias in Hiring Guide*

The four patterns below describe *tendencies not absolutes*. Here's what to watch out for:

Prove-It-Again! ("PIA") — Groups stereotyped as less competent often have to prove themselves over and over. "PIA groups" include women, people of color, individuals with disabilities,¹ older employees,² and first-generation professionals.³ Research documents the following tendencies:

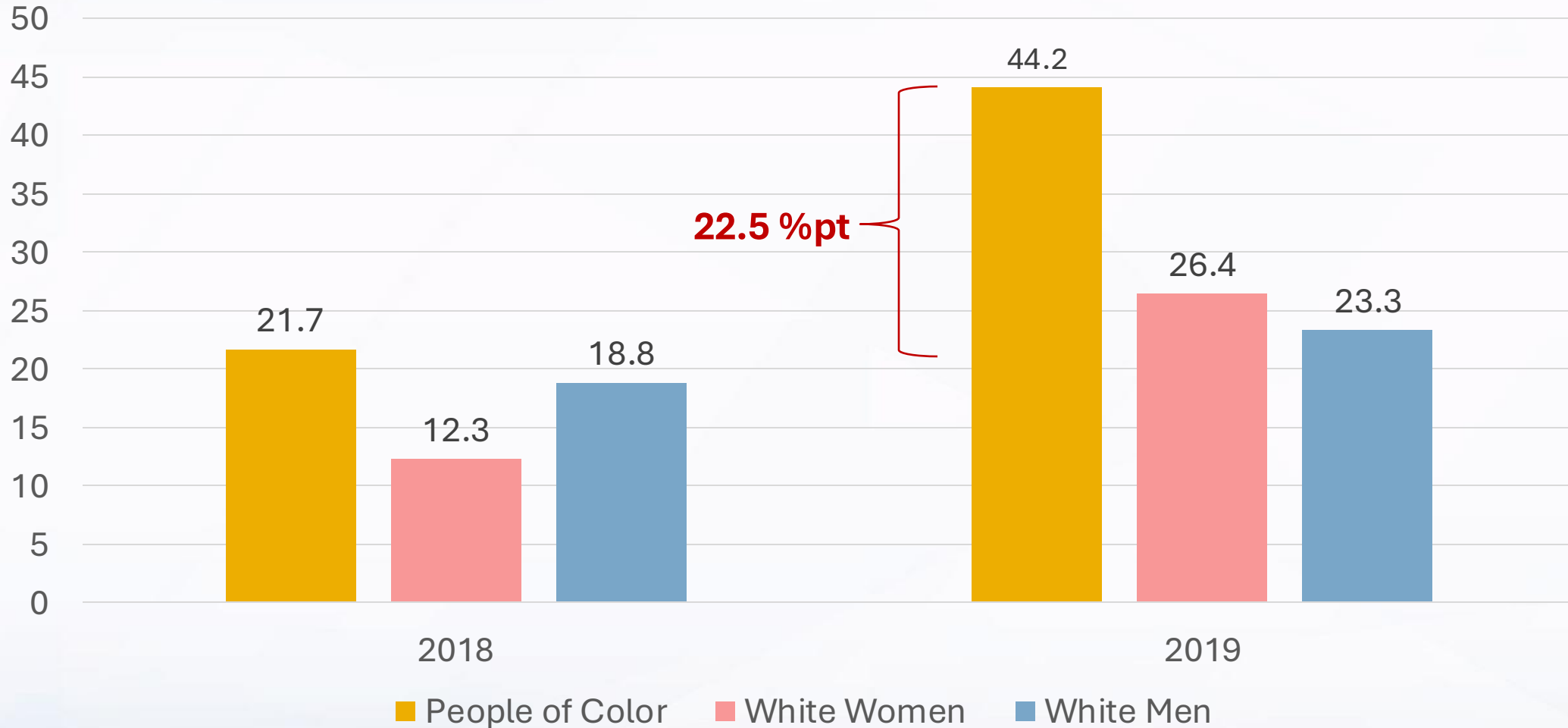
1. **Higher standards.** Despite identical resumes, a candidate who listed elite interests like tennis received 12 times more callbacks than one who signaled he was a first-gen professional.⁴ "Jamal" needed 8 more years of experience to be considered as qualified as "Greg."⁵
2. **"He'll crush it;" "They aren't ready."** The dominant group judged on potential, PIA groups on what they've already accomplished.⁶
3. **Casualty.** When a man had more experience but less education than women peers, people tended to choose the man on the grounds he had more experience. But when the man had more education but less experience, people again chose the man but shifted the rationale (now focusing on his education).⁷
4. **Elite school bias.** Over-reliance on elite educational credentials hurts first-generation professionals: almost half of Harvard students come from families in the top 4% of household incomes.⁸ Top students from lower ranked schools are often as successful as students from elite schools—and stay longer.⁹
5. **PIA groups get horns; others a halo.** Horns=one weakness generalized into an overall negative rating. Halo=one strength generalized into a global positive rating.¹⁰
6. **"We applied the rule—until we didn't."** Objective requirements often are applied rigorously to PIA groups but leniently for the dominant group (or waived entirely).¹¹
7. **Can only the superstars survive?** Superstars may escape PIA problems that affect others.¹²

Tightrope — A narrower range of workplace behavior often is accepted from women¹³ and people of color¹⁴ ("TR groups"). First-generation professionals and modest or introverted men can face Tightrope problems, too. Research documents the following tendencies:

1. **Leader or worker bee?** TR groups face pressure to be "worker bees" who work hard (but lack "leadership potential").¹⁵
2. **Modest, likeable, not ambitious.** Prescriptive stereotypes create pressures on TR groups to be modest, likeable team players—not ambitious go-getters.¹⁶
3. **Direct and assertive—or angry and abrasive?** Competitive, assertive behavior and straight talk often is seen inappropriate in TR groups — "tactless," "abrasive," "difficult," "intimidating." Anger also is accepted more in some groups than others.¹⁷



Bias Interrupters benefit *everyone*



Professional development initiatives*

Acting Chair Andrea Lucas*

Consider focusing on first-
generational professionals

Ensure mentor & sponsorship
programs are open to all

Standardize leadership
development and offer it to all



Include first-gen professionals

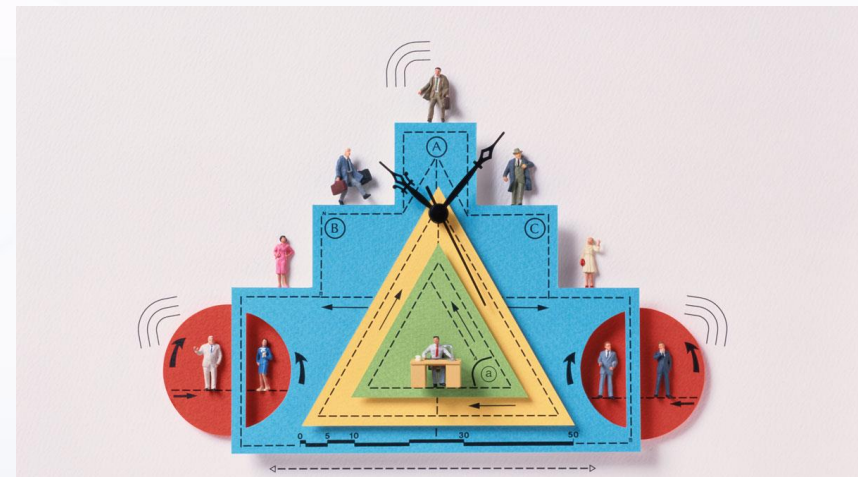
- 2/3 are POC
- Even white people are disadvantaged in high-social-capital professions

Diversity And Inclusion

Why Companies Should Add Class to Their Diversity Discussions

by Joan C. Williams, Marina Multhaup and Sky Mihaylo

September 5, 2018



hideki kuwajima/Getty Images

Why include first-gen?

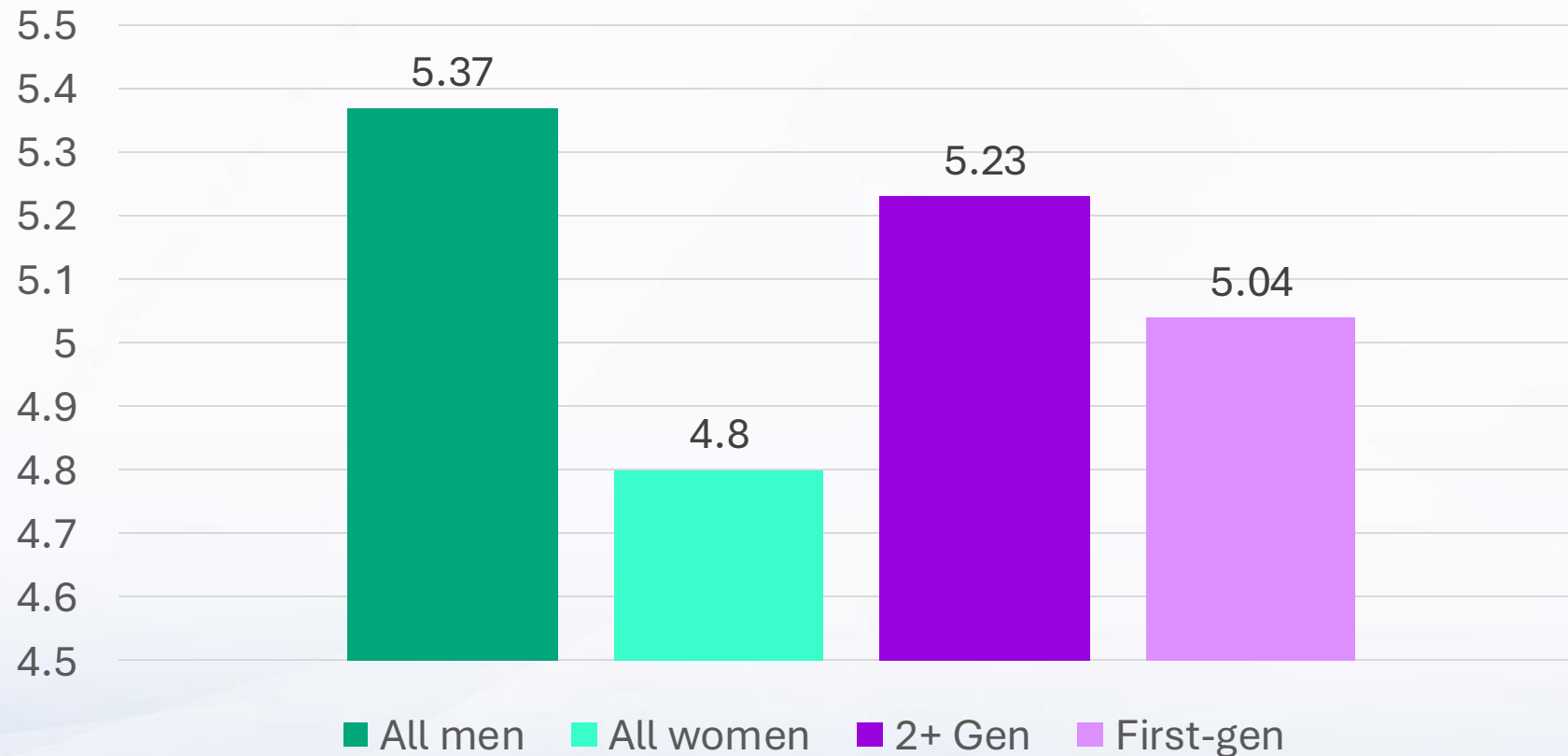
- Resumes sent to 147 firms
 - “Sailing, polo, classical music”
 - “Counseling first-gen students, country music”

Mr. Polo received 12x more callbacks than Mr.
Country Music



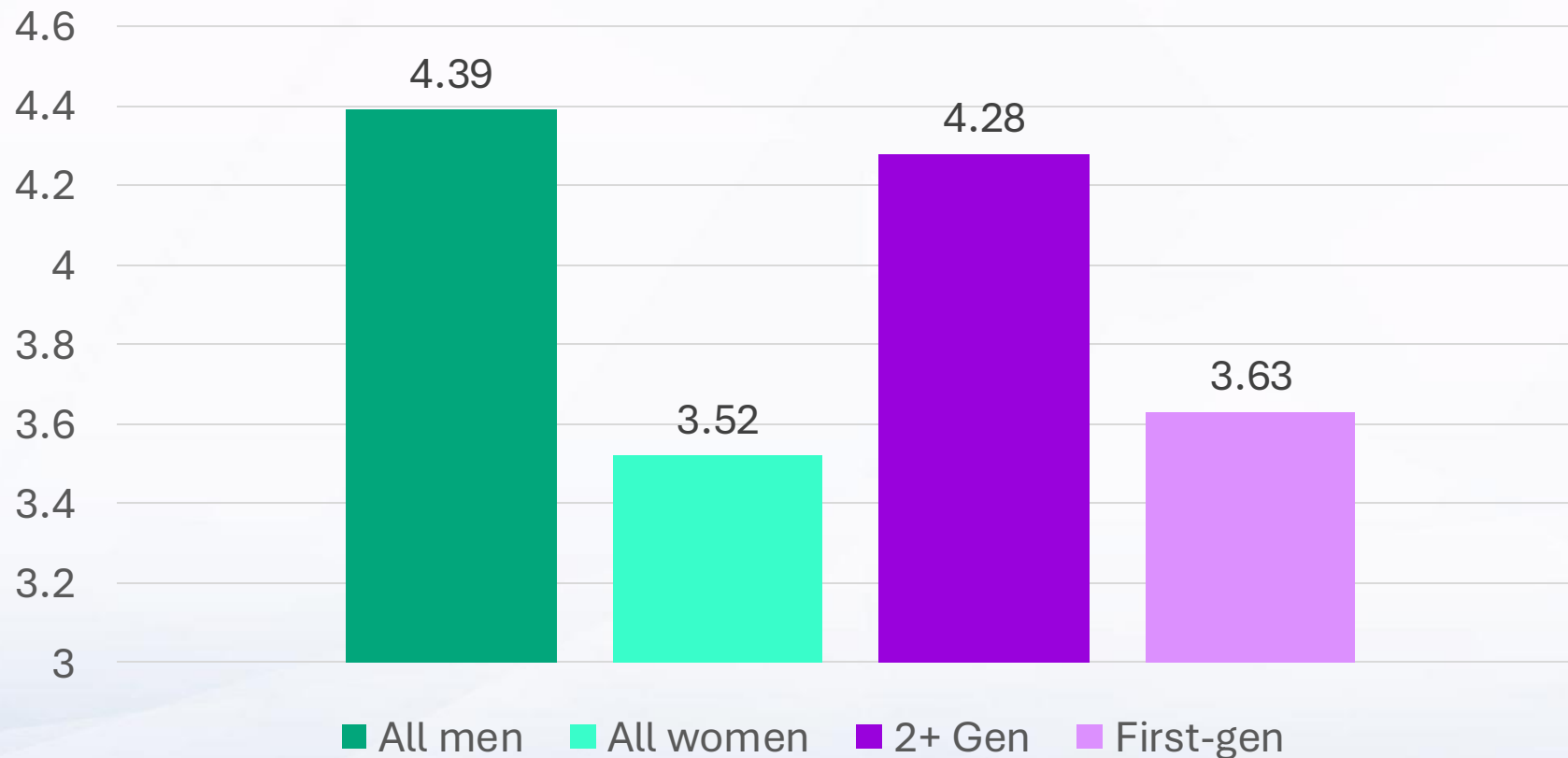
Culture fit | Realty company

The culture here is a good fit for me.



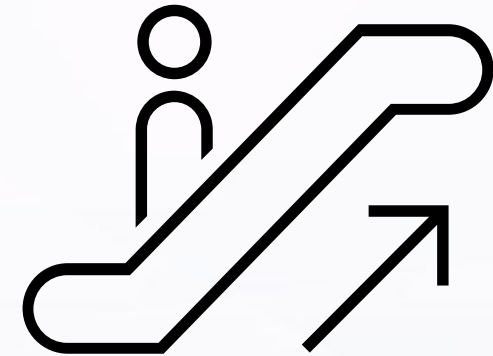
Clear path | Realty company

I see a clear path for advancement for myself here.



Leadership/capacity-building programming

- Baseline to control for legal risk*
 - Make available to all in similar / identical ways
 - Target at groups who may benefit most, but not based on protected status
- Can have substantive advantages
 - Modesty mandate: women, Asian Americans, first-gen



Sponsorship programs

- Baseline to control for legal risk*
 - *Muldrow v. St Louis*
 - Open to everyone, or to all high-potential employees
- Alternative approach
 - Sponsorship programs: mixed success
 - ATO intervention



Remember the Tasking Tool?

Tasking Tool

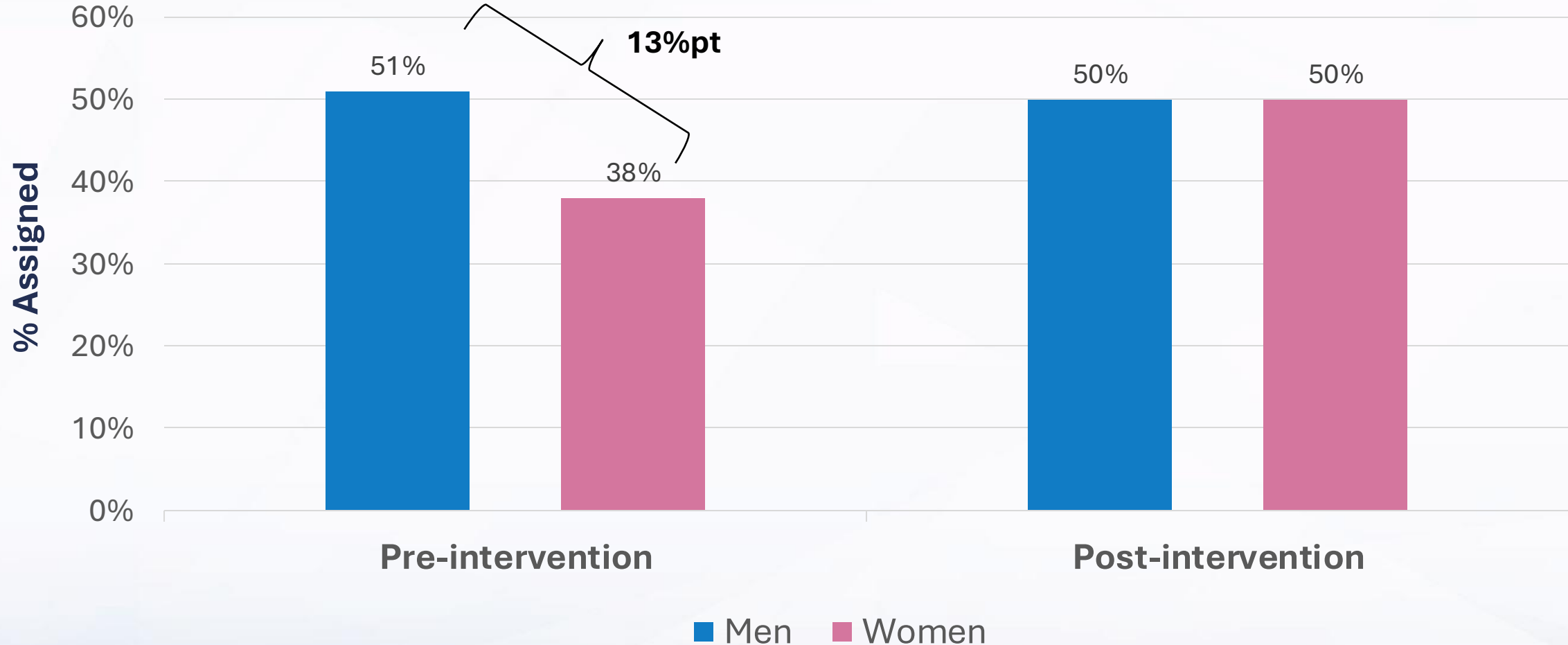
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Bias Interrupters work

Core Technical Products



Department A of an energy company

Targeted internships

- Activists at America First Legal are targeting*
- Alternative approach
 - University of California system





WOMEN'S LEADERSHIP

EDGE



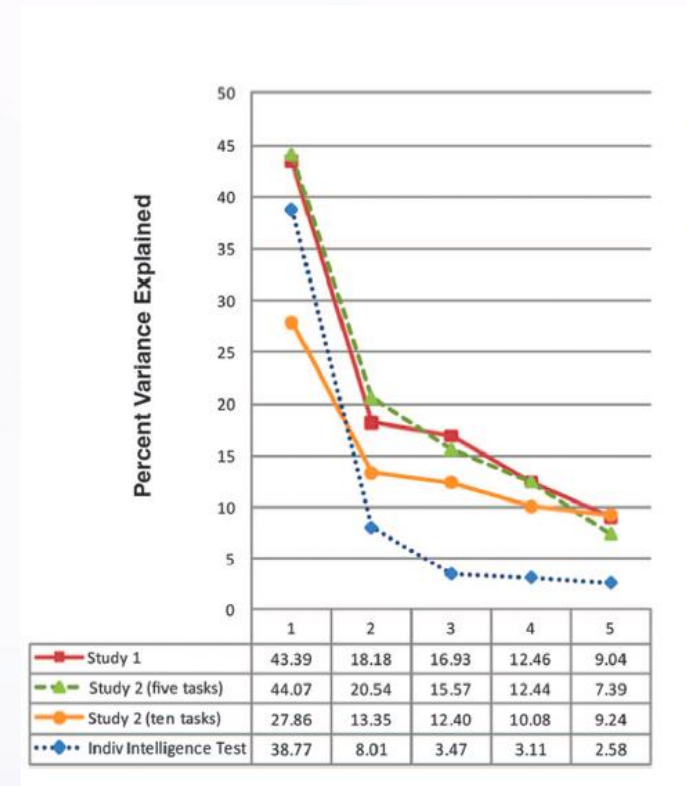
Seyfarth

womensleadershipedge.org

Evidence-based business goals

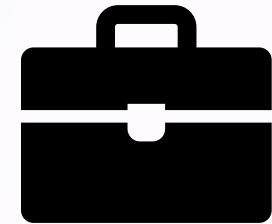
Evidence-based business goals

- **C**ollective intelligence accounts for 2x as much variance in team performance as **G**eneral intelligence
- Puzzles on mathematical reasoning, negotiating over limited resources, creativity



Evidence-based business goals

- Gender-diverse teams are higher in 'C'
 - More communication
 - More even distribution of speaking turns
 - Better at “reading the mind in the eyes”
- Racially-diverse teams work harder and help avoid group-think
 - Better at considering the facts
 - Make fewer errors in recalling relevant information
 - Exhibit broader thinking and consideration of alternatives



Firm-specific business goals

- Connect better with our customers
- Get an edge in recruiting scarce talent with the right skillsets
- Put others in the chat!

Universal business goals

- We need to tap the full talent pool – not just part of it
- We need to use fair and consistent standards in all aspects of talent management
- We need to provide fair access to opportunities



Universal business goals



Lack of access to opportunity is a key reason people leave their employers – and attrition is expensive (often 150% of annual salary)




Opportunities to expand skillsets improves employee engagement—engagement increases productivity by 22%

Additional resources

TED and LinkedIn



TED Ideas worth spreading WATCH DISCOVER ATTEND



TEDxMileHigh • December 2020 | 1.2M views Like (38K) Share Add

Why corporate diversity programs fail -- and how small tweaks can have big impact

[Read transcript](#)

 **Joan C. Williams** · You
Distinguished Professor of Law at UC College of the Law | Director of Equality ...
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The fact that President Trump issued an executive order banning diversity, equity, and inclusion programming on his very first day in office leaves many wondering how to pursue DEI goals without putting a target on their backs. This is particularly true of federal contractors, who employ roughly a quarter of American workers. But it's also true of every company, given the Executive Order's promise to take enforcement action against any company that engages in DEI initiatives.

Luckily, there's an answer. Here's a formula for pursuing the goal of a fair and equitable workplace without putting a target on your back. It has three elements:

- 1) Messaging: State that your goal is to create a true meritocracy, not to help this or that group.
- 2) Metrics: Collect metrics to identify pain points, so your initiatives are framed as a targeted answer to a specific business problem.
- 3) Take measures: Use evidence-based solutions to address the problems identified by your metrics.

[Equality Action Center | UC Law San Francisco](#)'s 15 years of research, work with scores of companies, and databases of over 120,000 people show that bias typically plays out in four basic arenas: hiring, meetings, access to opportunities and performance evaluations. I will be posting a series of roadmaps for each one, detailing what companies can do.

[#DEI](#) [#inclusion](#)

Bloomberg op-ed

“It’s long past time for employers to ditch DEI & return to EEO & merit.”

- Acting EEOC chair Andrea Lucas, on X (1/6/25)

Opinion | Vernā Myers & Joan C. Williams, Columnists

Trump Says He Wants Meritocracy. Here’s How to Do It.

Companies know it’s bad for business if White males are having better work experiences than all others.

January 31, 2025 at 7:30 AM EST

By **Vernā Myers** and **Joan C. Williams**



Non-inclusive. Photographer: Yuri Gripas/Abaca/Bloomberg

biasinterrupters.org

New Report: Pinning Down the Jellyfish: The Workplace Experiences of Women of Color in Tech [READ HERE](#)

BIAS INTERRUPTERS *small steps
big change* **WORKLIFE
LAW** 

OUR APPROACH PUBLICATIONS  TOOLKITS  SERVICES ABOUT

We Help Companies Correct and Prevent Bias In The Workplace

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