IADC COMMITTEE NEWSLETTER

Diversity, Equity, Inclusion and Belonging

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IN THIS ISSUE

In this edition of our DEIB Newsletter, we explore how building a culture of true belonging drives workplace innovation and organizational success, covering evolving federal regulations to lessons from pop culture and labor law.

Belonging in Action: How Inclusion Drives Innovation, Well-Being, and Business Performance

ABOUT THE AUTHOR

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ABOUT THE COMMITTEE

The Diversity, Equity, Inclusion and Belonging Committee is charged with actively increasing the involvement and participation of diverse attorneys in the organization through membership strategies and professional programming that recognizes the strength and benefits of inclusion and diversity in the practice of law. For these purposes, diverse attorneys include lawyers from groups of people who are underrepresented in the IADC's membership. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:

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Editor's Note

Welcome to this edition of our DEIB Newsletter, where we explore a powerful truth that is reshaping workplaces everywhere: belonging is not simply a DEIB outcome, it is a business imperative.

When employees feel valued, respected, and empowered to contribute as their authentic selves, remarkable things happen. Teams become more innovative because diverse perspectives are heard. Individuals experience greater well-being because they know they matter. Organizations perform better because engaged employees are more likely to collaborate, solve problems creatively, and deliver exceptional results.

Inclusion is often discussed as a goal, but belonging is where inclusion becomes real. It shows up in everyday moments, the meeting where every voice is welcomed, the leader who actively listens, the colleague who extends support, and the workplace culture that encourages people to bring their unique experiences and ideas to the table.

This issue highlights the many ways belonging, legal compliance, and organizational resilience intersect across our professional landscape:

- **Navigating the Legal Landscape of DEIB:** We dive into the ongoing legal challenges surrounding Executive Order 14398. As nineteen states challenge its implementation, we break down what this heightened judicial scrutiny means for state agencies, higher education, and federal contractors managing compliance and reporting duties.
- **Defining Belonging in the Modern Workplace:** Drawing unexpected yet valuable lessons from Prime Video's *Elle*, we explore the crucial distinction between mere presence and true belonging. This piece examines why law firms and corporations must build adaptable systems that embrace authentic perspectives rather than forcing assimilation.
- **Procedural Vigilance and Organizational Risk:** Turning to administrative law, we analyze the NLRB's recent *Boxart, Inc.* default judgment. This practical case study illustrates how missed procedural deadlines, especially during corporate transitions or financial stress—can instantly convert unproven allegations into severe liability.

Together, these articles demonstrate that diversity fuels innovation, inclusion strengthens engagement, and operational rigor unlocks sustainable success.

As you and your firms continue this journey, remember that building a culture of belonging is a shared responsibility. Each conversation, decision, and interaction presents an opportunity to reinforce the values that define who you are and who you aspire to be.

By putting belonging into action, we are not only creating a stronger workplace, you are building a law firm where every individual can contribute, grow, and succeed.

"Belonging is more than being invited to the table—it is knowing that your voice matters once you have a seat."

<u>The Legal Landscape of EO 14398: Implications for DEIB Strategy</u>

Nineteen states and the District of Columbia have filed a lawsuit challenging the federal government's rollout of Executive Order (EO) 14398, "Addressing DEI Discrimination by Federal Contractors." The coalition of plaintiff states challenges the EO and federal agency actions taken to implement what they allege are unclear requirements across new and existing contracts. The complaint was filed on June 10, 2026, against the United States, the Federal Acquisition Regulatory Council (FAR Council), and numerous federal agencies and agency officials.

EO 14398, issued March 26, 2026, directs agencies to add a new clause to federal contracts and "contract-like instruments," including subcontracts. The clause prohibits contractors from engaging in "racially discriminatory DEI activities," defined as disparate treatment based on race or ethnicity in recruitment, employment, contracting, program participation, or allocation or deployment of an entity's resources. It also requires contractors to include flow-down clauses in subcontracts, report known or reasonably knowable subcontractor conduct that may violate the clause and acknowledge compliance as material to payment decisions for purposes of the False Claims Act.

The plaintiffs allege that the contract term is unclear and does not provide sufficient explanation of what it prohibits. The definition of "racially discriminatory DEI activities" echoes existing prohibitions but neither the EO nor implementing actions explain how the new term differs from existing law, EO 11246 (in effect for 60 years), or EO 14173 (issued in January 2025). They allege the lack of clarity also extends to contractors' obligation to report subcontractor conduct that "may" violate the clause. The states also challenge the agencies' treatment of prior federal contractor rules, alleging the agencies did not adequately address the shift from requirements that had applied under the now-rescinded EO 11246.

The lawsuit also raises procedural and statutory challenges under the Administrative Procedure Act and federal procurement laws, alleging the FAR Council imposed contract terms with significant external effects without following required notice-and-comment procedures. In support, the complaint points to implementation memorandum dated April 17, 2026, in which the FAR Council directed agencies to use the clause in new contracts beginning April 24, 2026, update class deviations concerning the implementation of the clause by April 27, 2026, and make every effort to add the clause to existing contracts by July 24, 2026.

The states claim the new terms adversely impact them because they regularly perform federal contracts and subcontracts through state agencies and instrumentalities, including universities, with collective contracts worth billions of dollars annually. In their view, the unclear terms impose significant compliance challenges, costs, and burdens.

The case, which was filed in the U.S. District Court for the District of Maryland, remains pending. It is also not the only pending litigation involving EO 14398. In the higher education context, plaintiffs including the National Association of Diversity Officers in Higher Education filed a separate lawsuit in April 2026 challenging the EO on constitutional and ultra vires grounds.

Both lawsuits underscore that EO 14398 is entering a period of heightened judicial scrutiny, and its ultimate contours will likely be shaped as much by the courts as by agency implementation. As these cases proceed, contractors, universities, and state agencies should expect continued uncertainty around compliance obligations, reporting duties, and enforcement risk. Possible outcomes range from targeted injunctions limiting the EO's application, to requirements that the FAR Council revisit its rulemaking process, to broader rulings clarifying, or potentially curtailing, the federal government's authority to regulate DEI-related activity through procurement. For now, close monitoring of the litigation and forthcoming agency guidance remains essential, as the decisions in these matters will influence DEI governance across the federal contracting landscape.

What Belonging Really Means at Work: Lessons from Elle Woods and the Modern Legal Workplace

This summer, Prime Video introduced *Elle*, a prequel to *Legally Blonde* that follows a teenage Elle Woods after her family moves from Bel-Air to Seattle. I recently watched the series with my two daughters (ages 20 and 22). Beyond the humor and nostalgia, I was struck by how Elle's journey illustrates a core question many modern law firms and corporations confront daily: **What does it truly mean to belong?**

From the moment Elle arrives in Seattle, she stands out. Her vibrant pink wardrobe, relentless optimism, and unshakeable confidence clash dramatically with the surrounding grunge culture. She is physically present, yet she does not immediately feel accepted.

That distinction between *presence* and *belonging* is critical in the modern workplace. Hiring diverse talent, inviting individuals to key meetings, or adding them to cross-functional teams creates access. But access is only the first step. True belonging asks a deeper structural question: **Can a**

person contribute, grow, and succeed without first being forced to become like everyone else?

Throughout the series, Elle repeatedly decides how much of herself she is willing to alter to gain acceptance. She learns to navigate an unfamiliar environment, but she steadfastly refuses to abandon the core qualities that make her distinctive.

For law firm leaders, this highlights a pivotal workplace lesson: **adaptation is necessary, but assimilation should not be.** High-performing teams require adaptability to collaborate effectively, but when law firms confuse alignment with conformity, they erase the exact fresh perspectives they hired those individuals to bring. When psychological safety is missing, employees burn valuable cognitive energy masking their true identities just to blend in, energy that could otherwise drive innovation and creative legal strategy.

Furthermore, *Elle* demonstrates that belonging is a dynamic, two-way street. While organizing Homecoming, Elle realizes that leadership is not about monopolizing the spotlight, rather, leading requires active listening, delegating, and creating space for others to shine.

In law firms, belonging becomes tangible when organizations move past intent and focus on equitable systems:

- Granting high-visibility projects to non-traditional candidates.
- Creating clear pathways to leadership.
- Ensuring fair credit for ideas and contributions.

The series also shows Elle speaking up when she witnesses unfairness, even when doing so puts her social standing at risk. This carries significant professional implications. Belonging should never come with the hidden caveat: *"You are welcome here, as long as you don't rock the boat."* In psychologically safe workplaces, employees feel empowered to challenge legacy assumptions, raise red flags, and respectfully disagree with consensus without fearing professional retaliation or exclusion.

Ultimately, belonging is not about training unique individuals to fit an existing, rigid mold. It is about building adaptable organizational systems capable of recognizing talent in all its forms, ensuring every employee can confidently say, "There is a place for me to thrive here."

When Procedure Becomes the Merits

Five Lessons from the NLRB's Boxart Default Judgment

When an employer receives an unfair-labor-practice complaint, the natural instinct is to focus on the merits: What happened? What did management know? Was the employee engaged in protected activity? Can the General Counsel prove unlawful motive? *Boxart, Inc.* is a reminder that none of those questions may matter if the employer does not answer the complaint on time.[1]

In its July 24, 2026 decision, the National Labor Relations Board granted the General Counsel's motion for default judgment after Boxart, Inc. failed to file a timely answer to a complaint alleging that it discharged three employees because it believed they had joined Teamsters Local 814 and engaged in concerted activity. The result was not simply a procedural reprimand. The complaint's factual allegations were deemed admitted, the Board found violations of Section 8(a)(3) and (1) of the National Labor Relations Act, and the employer was ordered to provide reinstatement, backpay, additional pecuniary remedies, tax-related relief, record-cleansing, and notice posting.

For employers and defense counsel, the most important lesson is therefore broader than "calendar the deadline." *Boxart* shows that NLRB procedural deadlines should be treated as substantive risk-management events, especially during ownership changes, financial distress, counsel transitions, or fee disputes, when responsibility for a case can easily become blurred.

The Deadline That Became the Case

Teamsters Local 814 filed the charge on July 29, 2025. The General Counsel issued a complaint and notice of hearing on April 14, 2026. Under the Board's rules, an answer was due within fourteen days. If an answer is not timely filed, the allegations may be deemed admitted unless good cause is shown.[2]

The complaint itself warned that an answer was due by April 28 and that failure to respond could result in the allegations being treated as true. When no answer arrived, the Region emailed respondent's counsel on May 1 and advised that, absent an answer by May 8, it would seek default judgment. Counsel later advised the Region that Boxart had been sold and requested additional time. A May 19 letter sought a further extension to May 29, again citing the change in ownership. On May 27, the administrative law judge's office separately reminded the company that an answer was needed "asap." Still, no answer was filed.[3]

The General Counsel moved for default judgment on June 5. The Board issued a Notice to Show Cause on June 9. Only then, on June 23, did the employer file both a response to the notice and an untimely answer.

Why the Explanations Failed

The employer's explanation was straightforward. According to counsel, Boxart had been purchased by another entity because of significant financial problems, had accumulated a legal bill it

[1] *Boxart, Inc.*, 375 N.L.R.B. No. 12, slip op. at 1 (July 24, 2026) (Case 29-CA-370489).

[2] 29 C.F.R. § 102.20 (2026); *Boxart, Inc.*, 375 N.L.R.B. No. 12, slip op. at 1.

[3] *Boxart, Inc.*, 375 N.L.R.B. No. 12, slip op. at 1.

could not pay, and did not file the answer until counsel's outstanding balance was satisfied. The employer also argued that accepting the late answer would not prejudice anyone.

The Board rejected both arguments. First, inability to pay counsel was not good cause. The Board relied on precedent holding that merely being unrepresented, including because a party has no lawyer or cannot pay one, does not excuse noncompliance with filing obligations.[4] The rule is intentionally demanding: a represented party cannot assume that a breakdown in the attorney-client relationship suspends an agency deadline, and an unrepresented party is still responsible for responding.

Second, the employer did not comply with the Board's rule governing untimely filings. A party seeking permission to file late must show good cause based on excusable neglect and no undue prejudice, and the specific facts supporting that request must be presented in the manner required by the rule. In *Boxart*, the Board specifically noted that the employer failed to submit a sworn affidavit supporting its request.[5]

Third, the absence of prejudice did not save the filing. The Board reiterated that it need not find that another party was prejudiced before enforcing its procedural rules. In other words, "no harm, no foul" is not the governing standard for an untimely answer.[6]

<u>Default Converted Allegations into Liability</u>

Once the Board rejected the late answer, the practical effect was severe. The complaint's factual allegations were deemed admitted. The Board therefore treated as established that Boxart discharged Sofia Franklin, Ruaridh Gonzales, and Henry Sekimotto on or about June 27, 2025 because it believed they had joined the Union and engaged in concerted activities, and to discourage other employees from doing the same. Those admitted facts supported violations of Section 8(a)(3) and (1).[7]

That distinction matters. The Board did not weigh competing testimony about motive, assess credibility, or decide whether the employer could prove a legitimate reason for the discharges. Default eliminated the factual contest that would ordinarily define the case.

<u>The Remedy Was Anything but Technical</u>

The resulting order illustrates why an NLRB default should never be viewed as a minor

4 *Id.* at 1–2 (citing *Quality Investigations, Inc.*, 370 N.L.R.B. No. 138, slip op. at 1 n.4 (2021); *Lockhart Concrete*, 336 N.L.R.B. 956, 956–57 (2001); *Daviola Products, LLC d/b/a Imaginarium*, 366 N.L.R.B. No. 25, slip op. at 2 (2018)).

5 29 C.F.R. § 102.2(d)(2) (2026); *Boxart, Inc.*, 375 N.L.R.B. No. 12, slip op. at 1 n.3 (citing *W.R. Transportation, LLC*, 366 N.L.R.B. No. 59 (2018)).

6 *Boxart, Inc.*, 375 N.L.R.B. No. 12, slip op. at 2 (citing *South Atlantic Trucking*, 327 N.L.R.B. 534, 535 (1999)).

7 *Id.* at 2.

procedural loss. The Board ordered Boxart to offer all three employees full reinstatement to their former positions—or substantially equivalent positions if the former jobs no longer existed—without loss of seniority or other rights. It also ordered traditional make-whole relief for lost earnings and benefits, with interest calculated under the Board's established backpay methodology.[8]

The order went further. Applying *Thryv, Inc.*, the Board required compensation for other direct or foreseeable pecuniary harms caused by the unlawful discharges, including reasonable search-for-work and interim-employment expenses. It also required compensation for adverse tax consequences of lump-sum backpay awards, allocation reports to the Regional Director, corresponding W-2 forms, removal of references to the unlawful discharges from company files, written notice to the employees, preservation of payroll and personnel records, and posting and electronic distribution of the Board's notice where appropriate.[9]

The remedial discussion also contains an important preservation point. Chairman Murphy and Member Mayer stated that they continued to reserve judgment on whether the compensatory remedies announced in *Thryv* are permissible under the Act, but applied the precedent because there was no three-member majority to overrule it. That leaves defense counsel with two tasks at once: comply with controlling Board precedent while preserving objections to remedial theories that remain legally contested.[10]

<u>Five Practice Lessons</u>

1. Treat the NLRB answer deadline as a litigation deadline, not an administrative deadline. A Board complaint should enter the same calendaring, conflict-check, responsibility-assignment, and escalation systems used for a federal court complaint. The answer period is short, and the consequence of missing it can be admission of the complaint's factual allegations. Internal legal departments should also identify a backup owner for the matter so that vacations, departures, or business disruptions do not create a responsibility gap.

2. Corporate transactions do not pause pending labor matters. A sale, restructuring,

[8] *Id.* at 2–3; *see F.W. Woolworth Co.*, 90 N.L.R.B. 289 (1950); *New Horizons for the Retarded*, 283 N.L.R.B. 1173 (1987); *Kentucky River Medical Center*, 356 N.L.R.B. 6 (2010).

[9] *Boxart, Inc.*, 375 N.L.R.B. No. 12, slip op. at 2–4; *Thryv, Inc.*, 372 N.L.R.B. No. 22 (2022), vacated in part on other grounds, 102 F.4th 727 (5th Cir. 2024); *AdvoServ of New Jersey, Inc.*, 363 N.L.R.B. 1324 (2016); *Cascades Containerboard Packaging—Niagara*, 370 N.L.R.B. No. 76 (2021), modified, 371 N.L.R.B. No. 25 (2021).

[10] *Boxart, Inc.*, 375 N.L.R.B. No. 12, slip op. at 3 n.4 (citing *Performance Plumbing, LLC*, 374 N.L.R.B. No. 48, slip op. at 2 n.2 (2026); *Lodi Volunteer Ambulance Rescue Squad, Inc.*, 374 N.L.R.B. No. 26, slip op. at 3 n.3 (2026)).

or ownership transition may explain why communications become difficult, but it does not automatically suspend Board deadlines. Transaction checklists should include pending NLRB charges, complaints, hearings, subpoenas, settlement obligations, and filing dates. The outgoing and incoming business teams should expressly identify who has authority to instruct counsel and who is responsible for immediate filings.

3. A fee dispute must never become a deadline strategy. Counsel and client may have legitimate disputes over unpaid fees, continued representation, or withdrawal. But those issues must be resolved without allowing a jurisdictional or agency deadline to expire by inaction. If additional time is necessary, request it promptly, confirm the request in writing, and do not assume that an extension exists until it has actually been granted. If representation is ending, the client must understand that its filing obligations continue.

4. If a filing will be late, comply precisely with the late-filing rule. The strongest equitable explanation can fail if the procedural vehicle is defective. A motion for permission to file out of time should address excusable neglect and prejudice and should include the sworn factual support required by the Board's rules. Counsel should identify who has personal knowledge of the circumstances and obtain the affidavit before submitting the request.

5. Separate liability triage from remedy preservation. Even when default appears likely, defense counsel should not disengage. The scope and calculation of backpay, mitigation, interim earnings, tax consequences, reinstatement obligations, direct or foreseeable pecuniary harms, and notice requirements can have substantial financial consequences. In addition, where the Board applies a remedy whose statutory basis remains disputed, counsel should preserve the objection for reconsideration or appellate review.

The Broader Point

The most striking feature of *Boxart* is what the Board never had to decide. It did not need to resolve a novel labor-law doctrine. It did not need to choose between competing accounts of the terminations. And it did not need a hearing record establishing antiunion motive. The procedural default supplied the factual predicate for liability.

That is why the decision deserves attention from employers beyond the labor-law bar. Periods of financial stress, ownership transition, management turnover, and strained attorney-client relationships are precisely the moments when legal deadlines are most vulnerable, and when the cost of a missed deadline may be highest.

The practical takeaway is simple: before litigating the merits of an NLRB complaint, make certain the employer has preserved the right to litigate them at all.

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