



August 26, 2022

Mr. Manny Maceda
Managing Partner
Bain & Company, Inc.
131 Dartmouth Street
Boston, MA 02116

Sent via email

Dear Mr. Maceda:

I am an attorney at the Foundation Against Intolerance & Racism (FAIR), a nonpartisan, nonprofit organization dedicated to advancing civil rights and promoting a common culture based on fairness, understanding, and humanity. We have more than ninety chapters and tens of thousands of members nationwide. Our website, fairforall.org, can give you a fuller sense of our identity and activities.

We write in response to an [incident report](#) submitted to us through our transparency website, fairtransparency.org, regarding Bain's [Building Entrepreneurial Leaders](#) internship program. That program is open only to sophomores "who identify as Black, Hispanic/Latinx or Indigenous (Native American, Alaska Native, Inuit, Métis and First Nations)." Individuals of Asian or European descent are ineligible. According to Bain's website, interns are paid a stipend and receive other benefits, including social and networking opportunities and the potential to receive an Associate Consultant Intern offer.

FAIR supports lawful measures to increase professional training opportunities for members of underrepresented groups. Automatically disqualifying all applicants of non-preferred ancestries, however, is unlawful. Title VII of the Civil Rights Act prohibits employers from failing or refusing to hire individuals based on race, color, and national origin (among other traits). 42 U.S.C. § 2000e-2. Interns are protected under Title VII if they receive substantial benefits or remuneration of some form, even if it is not a formal wage and even if they are referred to as volunteers. *See, e.g., U.S. v. City of New York*, 359 F.3d 83, 91-2 (2nd Cir. 2004) (non-employees were covered under Title VII because they received "remuneration in some form," including food stamps, cash payments, transportation and child care expenses, and eligibility for worker's compensation coverage); *Bryson v. Middlefield Vol. Fire Dep't*, 656 F.3d 348, 355 (6th Cir. 2011) (volunteer firefighter could be deemed "employee" under Title VII because she received worker's compensation coverage, insurance coverage, gift cards, personal use of the department's facilities and assets, training, and access to an emergency fund); *Haavistola v. Community Fire Co.*, 6 F.3d 211, 221-2 (4th Cir. 1993) (fire company volunteer could be considered an "employee" under Title VII for receiving benefits such as insurance coverage, bestowal of a state flag, tuition reimbursement, and access to obtaining paramedic certification). Given that Bain's internship program includes a stipend and other benefits, Title VII applies and would prohibit banning individuals from candidacy based on their ancestry.

Although private employers may adopt preferences in employment decisions in limited circumstances, the available information suggests this is not one of those cases. Specifically, employers may implement temporary measures to eliminate “manifest racial imbalances” that do not create “an absolute bar” to or “automatically exclude” candidates of other ethnicities. *See United Steelworkers v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transportation Agency*, 480 U.S. 616, 638 (1987). Bain’s internship criteria automatically excludes all sophomores who are not members of the preferred ancestral groups. That is precisely the sort of discrimination disallowed under Title VII.¹

FAIR urges Bain to restructure its internship program in future summers to enable all sophomores to apply and be considered, regardless of their immutable traits. We believe that doing so will not only ensure that Bain is complying with applicable anti-discrimination laws, but also advance Bain’s commitment to “creat[ing] a culture of inclusion where every Bainie can thrive.”

We would like to give Bain an opportunity to respond. Please let us know within the next week if you intend to do so.

Very truly yours,

A handwritten signature in black ink, appearing to read 'L Kim', with a stylized, cursive script.

Letitia Kim
Managing Director of the Legal Network
Foundation Against Intolerance & Racism

¹ Even if completely uncompensated with no benefits, the internship program would violate the laws of several states in which Bain operates. New York, California, and Maryland, for example, all prohibit discrimination based on race and color in unpaid internships. *See* N.Y. Exec. Law § 296-c (employers may not refuse to hire unpaid interns based on race, creed, color, national origin, and other traits); Cal. Gov’t Code. § 12940(c) (making it unlawful to discriminate based on race, color, national origin, ancestry, and other grounds in the “selection” of persons for unpaid internships); Md. Gov’t Code § 20-610(b) (employers may not “fail or refuse to offer an internship” based on race, color, national origin, and other characteristics).