



August 26, 2022

Mr. Bob Sternfels  
Global Managing Partner  
McKinsey & Company  
3 World Trade Center  
175 Greenwich Street  
New York, NY 10007

*Sent via email*

Dear Mr. Sternfels:

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](http://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](http://fairtransparency.org) regarding McKinsey's [Sophomore Summer Business Analyst](#) internship. According to the report and McKinsey's website, the internship is only "open to applicants who self-identify as members of a historically underrepresented group in the management consulting profession, including Black, African American, Hispanic, Latino, and/or part of Indigenous groups in North America." It is unclear whether the internships are paid.

FAIR supports lawful measures to provide professional training opportunities to members of historically underrepresented groups. Automatically disqualifying applicants for such opportunities based on skin color, however, is unlawful. Several states in which McKinsey operates—including New York, California, and Maryland—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).

Additionally, if the interns are compensated even non-monetarily, the program may Title VII of the Civil Rights Act. That statute makes it unlawful for employers to "fail or refuse to hire" individuals based on race, color, religion, sex, or national origin. 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 unpaid 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). Thus, if McKinsey’s internship program includes any form of remuneration or 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). McKinsey’s internship criteria automatically excludes all sophomores who are not members of the preferred racial and ethnic groups. That is precisely the sort of discrimination disallowed under Title VII.

FAIR urges McKinsey to restructure its summer internship program to enable all sophomores to apply and be considered, regardless of their immutable traits. We believe that doing so will not only ensure that McKinsey is complying with applicable anti-discrimination laws, but also advance McKinsey’s commitment to “promote diversity in our own firm, and to foster an inclusive culture where every colleague feels a deep sense of respect and belonging.”

We would like to give McKinsey 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 flourish at the end.

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