

Executive Summary

Legal Primer for Policymaking to Advance Health & Racial Equity

Overview

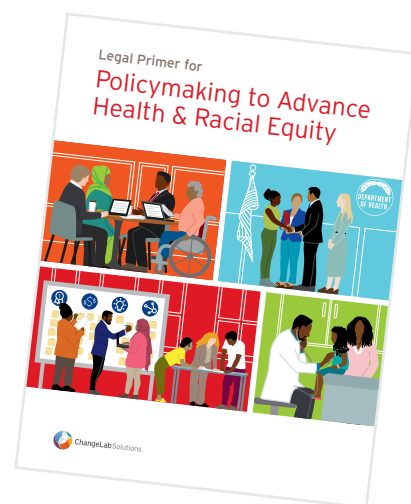
The *Legal Primer for Policymaking to Advance Health & Racial Equity* equips policymakers, public agencies, and community partners with practical and legally grounded guidance on how to design, implement, and defend policies that advance racial equity. This resource helps changemakers understand the legal standards governing equitable policymaking and provides information on how to evaluate legal risks and apply strategies to advance legally feasible, community-informed policy solutions.

Structural racism drives major health inequities in the United States, and laws and policies have long shaped unequal access to the social determinants of health. Because colorblind approaches are insufficient to remedy these harms, it is critical to understand the legal landscape related to policymaking that takes racial equity into account. This is particularly important given the current legal and political climate.

Although there is heightened attention on policymaking to advance racial equity in light of recent court decisions and executive actions, the core civil rights framework remains intact, and many strategies to advance racial equity remain fully lawful. Efforts to advance racial equity must balance legal risks with the equally significant risks of inaction, as retreating too far from values-driven approaches to address racism can perpetuate harms and, in some cases, create legal vulnerabilities.

A key question for changemakers seeking to advance racial equity is: *Which policy approaches are more or less likely to face legal challenges, including lawsuits, government investigations, and enforcement actions?*

The [Legal Primer for Policymaking to Advance Health & Racial Equity](#) answers this question and many others. See our summary below, and for a deeper dive – including examples and additional nuances to consider – download the full [Primer](#).



How Courts Evaluate Policies That Advance Racial Equity

Understanding the standards courts apply when policies are challenged based on the U.S. Constitution's guarantee of equal protection is essential to assessing legal risks when designing policies to advance racial equity.

Race-Based Policies

Race-based policies, which explicitly use race as a criterion when allocating benefits or imposing burdens, face *strict scrutiny* and must be narrowly tailored – meaning there are no effective race-neutral alternatives – to a compelling government interest, such as remediating specific past instances of government-sponsored racial discrimination. Strict scrutiny is a very demanding standard. In practice, this means that race-based policies are likely to face lawsuits and are often struck down by courts.

Race-Neutral Policies

Race-neutral policies, which do not use explicit racial classifications but may still advance racial equity depending on design, generally face *rational basis* review – the most deferential standard – and must be rationally related to a legitimate government interest. Policies subject to this review are less likely to face lawsuits, and even if they do, courts are likely to uphold them. However, if there is evidence that a race-neutral policy is motivated by an impermissible racial purpose or intent, it would likely be subject to strict scrutiny.

Federal, State, & Local Non-Discrimination Laws

Courts often use similar standards when addressing challenges based on federal, state, and local antidiscrimination laws, which may apply alongside constitutional requirements and sometimes extend protections further.

Legally Viable Policy Approaches

Within the legal standards described above, there are many strategic opportunities for changemakers in both the public and private sectors to pursue policies to advance racial equity. In general, race-based policies carry more legal risk than race-neutral policies, though neither is inherently illegal. Both types of policies can either promote or hinder racial equity-related goals. Because these policy design choices have both legal and practical significance, it's important for changemakers to understand the distinction:

- Race-based policies narrowly tailored to remediate specific, documented instances of government-sponsored racial discrimination face the highest legal risk but may still be feasible depending on the circumstances.
- Race-neutral policies adopted with awareness of their potential positive impact on different racial groups – especially those that allocate benefits based on a broad, race-neutral category such as income – are generally lower risk. However, the risk may increase if there is evidence of an impermissible racial purpose or intent.
- Race-neutral policies that do not inherently allocate benefits or impose burdens, such as those extending protections across broad populations (e.g., occupational health and safety standards) or establishing data collection requirements to understand racial disparities, pose a low legal risk.

When selecting an approach, changemakers must weigh their tolerance for legal risk alongside considerations of which strategies are most effective for advancing racial equity and the potential consequences of inaction.

The [Primer](#) delves into additional challenges for policymaking to advance racial equity, including reverse discrimination lawsuits, anti-DEIA efforts, and weak civil rights enforcement. It also explores key legal risks and concepts at the federal, state, and local levels that changemakers should be aware of when doing policy work.

Putting the Legal Framework Into Action

When engaging in equitable policymaking, the following strategic considerations and practice tips can help changemakers advance their policy goals. The *Primer* provides a more in-depth look at each step, with examples. Here is an overview:

- 1. Establishing an Evidence Base**
Gather data and evidentiary support to help identify problems, such as health disparities, and inform policy changes to address them. Collection of race and ethnicity data, including the creation of legal requirements to collect such data, is clearly permissible under existing legal precedent.
- 2. Building a Coalition & Community Support**
Engage in inclusive, ongoing community collaboration to build support and ensure policies reflect community needs, while complying with legal limits on race-based outreach.
- 3. Selecting & Designing a Policy**
Choose and design equitable policies by weighing evidence, legal risks, and available race-based or race-neutral approaches, with guidance from legal counsel.
- 4. Developing the Record to Support a Policy**
Build a clear, collaborative record that supports the policy's purpose and demonstrates awareness, rather than intent, when addressing racial disparities.

5. Implementing, Enforcing, & Evaluating a Policy

Implement, enforce, and evaluate policies through education, process adaptation, and monitoring, using the same evidence-based and legally grounded approach as in policy design.

6. Defending a Policy

Defend policies strategically in the face of court challenges by grounding them in strong evidence and a clear record, engaging partners and allies, and carefully weighing litigation risks – including when not to defend a policy.

Conclusion

Both race-based and race-neutral policies that seek to advance racial equity have legally viable paths forward and are critically needed to address racial disparities in health arising from historical and ongoing racism built into our structures and systems.

We encourage you to explore our [Legal Primer for Policymaking to Advance Health & Racial Equity](#) to learn more about these legal and policy considerations.

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