



April 25, 2024

Danny Meyer
Founder and Chairman of the Board
Randy Garutti
Chief Executive Officer and Director
Shake Shack, Inc.
225 Varick Street, Suite 301
New York, New York 10014

Dear Mr. Meyer and Mr. Garutti:

We write to you in your respective capacities as Founder and Chairman of the Board and as Chief Executive Officer and Director, respectively, of Shake Shack, Inc. (the “Company”).

The purpose of this letter is to alert you to strong evidence that management is engaging in patent and overt violations of federal civil rights laws. As you should know, workplace anti-discrimination mandates are an essential and mission-critical regulatory compliance risk. You and the Board (jointly “you”), among your other fiduciary obligations, have a duty of oversight and must put in place a reasonable board-level system of compliance monitoring and reporting relating to these mandates.¹

There is additional evidence that you have failed to discharge your duties to create shareholder value and ensure the Company complies with applicable laws. Yet, the Company has unambiguously emphasized diversity, equity, and inclusion at the expense of shareholder value. Further, the Company has infused its hiring, promotion, and recruitment practices with divisive and harmful unlawful racial considerations. At a minimum, this conduct indicates that the Company lacks effective internal controls and suggests an inappropriate disregard of your fiduciary duties to Shake Shack and its shareholders.

I. The Company’s race, color, and sex obsession is unlawful.

Title VII of the Civil Rights Act of 1964 establishes as unlawful the use of race, color, religion, sex, or national origin as a motivating factor for any employment practice.²

¹ See *Marchand v. Barnhill*, 212 A.3d 805, 824 (Del. 2019); *In re Clovis Oncology, Inc. Derivative Litig.*, No. CV 2017-0222-JRS, 2019 WL 4850188, at *12 (Del. Ch. Oct. 1, 2019).

² 42 U.S.C. § 2000e-2(m).

Shake Shack represents to shareholders, investors, and the public that it has and will continue limiting, segregating, or classifying employees or applicants for employment in ways that would deprive, or tend to deprive, white and/or male individuals of employment, training, or promotions because of their race, color, or sex.

Shake Shack acknowledges that its “business is subject to the risk of litigation by team members, guests, suppliers, licensees, stockholders or others through private actions, class actions, administrative proceedings, regulatory actions or other litigation.”³ Shake Shack also acknowledges that restaurant companies have recently been the subject of lawsuits “alleging violations of federal and state laws regarding workplace and employment matters, discrimination and similar matters,” which may be “expensive to defend” and “may generate negative publicity, which could reduce guest traffic and Shack sales.”⁴ The Company admits that the result of such litigation or the “adverse publicity resulting from claims could adversely affect our business, financial condition and results of operations.”⁵

Despite the Company’s acknowledgment of the risks presented by unfair employment practices, Shake Shack knowingly and intentionally discriminates concerning compensation, terms, conditions, or privileges of employment because of race, color, and sex in violation of 42 U.S.C. § 2000e-2(a)(1), (d). For example:

- A Proxy Statement filed with the Securities and Exchange Commission (“SEC”) on May 19, 2023, describes multiple discriminatory employment practices. First, “Diversity (race, ethnicity, gender, geography, sexual orientation, age, nationality, religious beliefs, socio-economic status, physical and/or mental capabilities)” is explicitly listed among the “Additional Selection Criteria” for Shake Shack’s evaluation of candidates for its Board.⁶ This definition of diversity affirmatively includes protected characteristics, and Shake Shack’s Proxy Statement reveals more targeted diversity goals. Shake Shack further explains that the Board’s “overall diversity” is a “significant consideration in the director nomination process;”⁷ the Company also has “**5-Year Diversity Targets**” that focus on “**women and people of color specifically**” as the Company looks to “match the demographics of [its] workforce with the country at large.”⁸ To that end, Shake Shack describes its discriminatory race, color, and sex targets: “**By 2025, we are targeting 50%**

³ Shake Shack Inc. (SHAK), Form 10-K Annual Report for the fiscal year ending December 27, 2023, at 33 (Feb. 7, 2024), <https://bit.ly/3UtUVIT>.

⁴ *Id.*

⁵ *Id.*

⁶ Shake Shack Inc., Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 at 15, (May 19, 2023), <https://bit.ly/3WcdUTn>.

⁷ *Id.* at 16. Just below the paragraph with this statement is a chart tracking the sex, race, and ethnicity of its directors.

⁸ *Id.* at 19 (emphasis added).

of our Shack leadership and 30% of our home office leadership roles to be filled by people of color...⁹

- A press release on Shake Shack’s website from 2021, titled “New Goals: Our Ongoing Commitment to Diversity, Equity & Inclusion,” reveals that the Company has been pursuing its race, color, and sex-based diversity goals since at least 2021 and is actively tracking its progress in meeting them. “By 2025, we want to have: 50% people of color in Shack Leadership (currently 34.7%) and 30% in Home Office Leadership roles (currently 19.6%); Gender parity between men and women in Shack Leadership (currently 23.7%) and Home Office Leadership roles (currently 49%).”¹⁰
- A June 2023 update on Shake Shack’s progress towards its DEI goals titled “Our Continued Action In Workplace, Diversity, Equity and Inclusion, Supply Chain and Sustainability Initiatives” touts the Company’s race, color, and sex-based employment decisions: **“Since establishing our 2025 diversity goals, we’ve increased the representation of women and people of color in Shack leadership by 33% and 18%, respectively. Our continued focus on the attraction, development and retention of diverse leadership moves us closer toward achieving our broader goals.”**¹¹ The 2023 update also explains that Shake Shack is “dedicated to doing the work it takes to be a company that values diversity, not only in [its] words, but in [its] actions . . . Ensuring equal opportunity for success, diversity in leadership at all levels and a culture that embraces different backgrounds and ideals has been the focus of [Shake Shack’s] efforts since day one.”¹²

Shake Shack’s 2023 “Stand for Something Good” report (“2023 Report”), published this week, describes its diversity initiatives through the lens of race, color, and sex:

- **“We aspire to have diverse teams at all levels of the Company”** and **“remain committed to attaining gender parity and diverse representation** in terms of background, thought, and experiences...”¹³

⁹ *Id.* at 20 (emphasis added).

¹⁰ *New Goals: Our Ongoing Commitment to Diversity, Equity & Inclusion, Shack News, SHAKE SHACK* (Sept. 17, 2021), <https://bit.ly/3W1Irn2>.

¹¹ *Our Continued Action In Workplace, Diversity, Equity and Inclusion, Supply Chain and Sustainability Initiatives, Shack News, SHAKE SHACK* (June 22, 2023), <https://bit.ly/49CIZTh> (emphasis added).

¹² *Id.*

¹³ SHAKE SHACK, *Stand For Something Good: 2023 Summary at 20* (Apr. 22, 2024), available at <https://bit.ly/4daJuqJ> (emphasis added).

- To achieve its goals, Shake Shack is “**implementing strategies that attract diverse talent**” and “continue[s] to explore **new recruiting channels and partnerships to engage diverse talent.**”¹⁴
- Shake Shack has accordingly established discriminatory targets for its workforce: “**By 2025, we are targeting 50% of Shack Leadership and 30% of Home Office Leadership roles filled by people of color, while also achieving gender parity across all leadership roles.**”¹⁵
- Diversity, in this context, clearly means considering employees’ race, color, and sex; on this page of the 2023 Report titled “Diversity as a Business Imperative,” Shake Shack shares data on the race, color, and sex of its employees. Shake Shack acknowledges that it is “**making progress**” towards achieving these diversity targets and notes that “real change takes time.”¹⁶
- Shake Shack also has multiple Employee Research Groups. One group called “HEROIQ+” (which stands for “Helping to Educate Regarding Orientation, Identity, and Queerness+”) created a “a Transgender Ally Guide, sharing it Company-wide to help educate and foster more inclusion, and **curated resources to support team members who transition at work** and their managers in partnership with the People Resources Team.”¹⁷
- Another Employee Research Group called “SHE” (“Support. Honor. Empower.”) is “focused on **celebrating women within Shake Shack** last year. They published the Women to Know Series internally, **highlighting over 30 Shake Shack women** from across the business, sharing how they each live the mission of SHE to support, honor, and empower other women.”¹⁸
- Shake Shack also supports the United Nations’ Sustainability Development Goals which include a commitment to “[a]dvance gender equality and **empower all women and girls.**”¹⁹
- Shake Shack’s “**women’s leadership development**, new manager training for new people managers, and market leader training programs **help our teams gain the leadership skills and confidence they need to succeed.**”²⁰

¹⁴ *Id.* (emphasis added).

¹⁵ *Id.* (emphasis added).

¹⁶ *Id.* (emphasis added).

¹⁷ *Id.* at 30 (emphasis added).

¹⁸ *Id.* (emphasis added).

¹⁹ *Id.* at 6 (emphasis added).

²⁰ *Id.* at 27 (emphasis added).

The 2022 version of Shake Shack’s “Stand for Something Good” report (“2022 Report”), published in June 2023, provides additional insight into how Shake Shack infused race, color, and sex into its employment actions:

- “We aim to be **as diverse as the communities we serve**. Women make up 51%, and people of color comprise 80% of our total workforce. Having diverse representation across all functions and levels of our business is key to our success and continued future growth. We know **we still have a lot of work to do**, and that work takes time. Our team is committed to **a continued focus on diversity**.”²¹
- “**By the end of 2025, we are targeting that 50% of our Shack Leadership and 30% of our Home Office Leadership roles will be filled by people of color and to achieve gender parity across all leadership roles, recognizing that change takes time.**”²² (Emphasis in original.)
- Idris Stover, Shake Shack’s Director of Diversity, Equity & Inclusion, is quoted stating that “[s]haring our five-year targets helps hold us accountable to cultivate a leadership team that is diverse, but more importantly, one that is positioned to support our future growth and success.”²³
- The 2022 Report indicates that Shake Shack “[i]ncreased the representation of women and people of color in Shack leadership and made progress toward achieving our five-year diversity targets,” which is described as one of Shake Shack’s 2022 People Milestones.²⁴
- Shake Shack reported “[m]ore than 2.6k internal promotions, with 55% going to women and 77% going to people of color” – another 2022 People Milestone.²⁵ (Emphasis in original.) As part of Shake Shack’s commitment to a “highly diverse workforce at all levels of the company,” the 2022 Report states that Shake Shack “require[s] at least two underrepresented minorities, women, or people of color to be considered and interviewed when hiring for leadership positions in our Shacks and Home Office.”²⁶ (Emphasis in original.)

²¹ SHAKE SHACK, Stand For Something Good: 2022 Summary at 27 (June 22, 2023), available at <https://bit.ly/3vV60TM>.

²² *Id.* at 27.

²³ *Id.* at 27.

²⁴ *Id.* at 19.

²⁵ *Id.* (emphasis added).

²⁶ *Id.* at 25 (emphasis added).

II. These programs create legal and reputational risk and threaten to waste corporate assets.

Title VII targets and declares unlawful employment practices that treat a person worse because of race, color, religion, sex, or national origin. That “worse” treatment need not be “significant” and must pertain to—must be “with respect to”—employment “terms [or] conditions.” 42 U.S.C. § 2000e–2(a)(1). The “terms or conditions phrase is not used in the narrow contractual sense; it covers more than the economic or tangible.”²⁷

Shake Shack repeatedly admits that considerations of race, color, national origin, and sex play a motivating factor in the Company’s employment practices. Yet these considerations, purportedly embedded in the Company’s culture and day-to-day operations, are patently illegal. *See* 42 U.S.C. §§ 2000e-2(a), (d).²⁸ The law is that an unlawful employment practice is established when the evidence demonstrates that race, color, religion, sex, or national origin is *a* motivating factor for an employer. 42 U.S.C. § 2000e-2(m).

The Company’s self-described, ongoing employment practices are patently unlawful, deeply harmful, and immoral.²⁹ Discrimination based on immutable characteristics such as race, color, national origin, or sex “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.”³⁰ Decades of case law hold that — no matter how well-intentioned — policies that seek to impose racial balancing are prohibited.³¹ More broadly, the discrimination highlighted in this case necessarily foments contention and resentment; it is “odious and destructive.”³² It truly “is a sordid business, this divvying us up” by race or sex.³³

III. Demands for compliance.

To prevent the waste of Shake Shack’s assets; to repair and safeguard the Company’s brand, goodwill, and reputation among its core customers; to protect Shake Shack’s shareholders; and in fulfillment of your fiduciary duty to ensure Shake Shack’s

²⁷ *Muldrow v. City of St. Louis*, 601 U.S. ____ (2024) (cleaned up); *Bostock v. Clayton County*, 590 U. S. 644, 658, 681 (2020).

²⁸ *See, e.g., United Steelworkers of Am. v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, 480 U.S. 616, 621-641 (1987); *see also Bostock*, 590 U.S. at 644.

²⁹ *Bob Jones Univ. v. United States*, 461 U.S. 574, 593 (1983) (“racial discrimination in education violates a most fundamental national public policy, as well as rights of individuals”).

³⁰ *Brown v. Bd. of Education*, 347 U.S. 484, 494 (1954).

³¹ *See, e.g., United Steelworkers*, 443 U.S. at 208; *Johnson*, 480 U.S. at 621-641; *see also Bostock*, 590 U.S. at 650.

³² *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

³³ *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

compliance with civil rights laws, we demand that you and the Board immediately take the following steps:

1. Retain an independent counsel for a full investigation of and a report on the events and circumstances behind management's decision, as described on Shake Shack's Proxy Statement as recently as June 2023 that "[b]y 2025, we are targeting 50% of our Shack leadership and 30% of our home office leadership roles to be filled by people of color..."³⁴ In addition, the independent counsel should investigate Shake Shack's nomination of directors and its practices related to employment, training, promotion, and salary benefits based on employees' race, national origin, and sex and the withholding of these opportunities and benefits from employees and candidates of disfavored groups. The independent counsel should also investigate whether the Board evaluated the cost of losing or not promoting more talented or experienced employees and candidates because they were of the wrong sex or race. To avoid the expense and disruption of litigation enforcing Shake Shack's disclosure obligations under the Private Securities Litigation Reform Act of 1995, the investigation should include a full disclosure by the Board of all of management's contemporaneous emails and other communications on this topic to Shake Shack's employees and shareholders and all communications to or from Shake Shack's General Counsel regarding this matter. Shake Shack should promptly and transparently publish all studies and analytic data that it possesses about the effect of these policies.
2. Compel Shake Shack to immediately (a) to cease all employment practices that discriminate based on race, color, sex, or national origin or that are designed to "match the combined demographics" of any racial or other group; (b) to cease and desist from making any statements or representations promoting or promising employment outcomes based on race, color, sex, or national origin; and (c) to retain an independent counsel to conduct a compliance audit of Shake Shack's hiring, promotion, recruitment, and purchasing practices to ensure that they comply with federal civil rights laws. Again, to avoid the expense and disruption of litigation enforcing Shake Shack's disclosure obligations under the Private Securities Litigation Reform Act of 1995, the compliance audit and all relevant emails and other management communications regarding the racial balancing and other prohibited hiring and contracting practices described in Shake Shack's 10-K and Proxy Statement should be made promptly and fully available.
3. In anticipation of litigation, direct Shake Shack to preserve all records relevant to the issues and concerns noted above, including but not limited to paper records and electronic information, including email, electronic calendars,

³⁴ Shake Shack Inc., Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 at 20.

financial spreadsheets, PDF documents, Word documents, and all other information created and stored digitally. This list is intended to give examples of the types of records you should retain. It is not exhaustive. Thank you in advance for your cooperation.

Thank you in advance for your cooperation.

Sincerely,
/s/ Will Scolinos
America First Legal Foundation

Cc: Robert Vivian, Lead Director
Sumaiya Balbale, Director
Lori George, Director
Chuck Chapman, Director
Anna Fieler, Director
Jeff Flug, Director
Jeffrey Lawrence, Director
Jenna Lyons, Director
Josh Silverman, Director
Jonathan D. Sokoloff, Director
Tristan Walker, Director

APPENDIX

Additional Selection Criteria

In evaluating director candidates, the Nominating and Corporate Governance Committee and the Board may also consider the following criteria as well as any other factor that they deem to be relevant:

- Experience in corporate management, such as serving as an officer or former officer of a publicly held company;
- Experience as a board member of another publicly held company;
- Experience as an executive of a publicly held retail restaurant company;
- Professional and academic experience relevant to the Company's industry;
- Diversity (race, ethnicity, gender, geography, sexual orientation, age, nationality, religious beliefs, socio-economic status, physical and/or mental capabilities);
- Strength of the candidate's leadership skills;
- Experience in finance and accounting and/or executive compensation practices;
- Experience in successfully scaled technology business(es);
- Whether the candidate has the time required for preparation, participation and attendance at Board meetings and committee meetings;
- Appreciation/understanding of the values of Daniel Meyer's vision of "Enlightened Hospitality"/ culture/brand strength;
- International business experience, in particular with respect to franchising or licensing;
- Understanding of technologies pertinent to the Company's business;
- Experience with raising and deploying capital; and
- Experience in addressing sustainability priorities.

In addition, the Board considers whether there are potential conflicts of interest with the candidate's other personal and professional pursuits.

Diversity

The Company values diversity on a Company-wide basis and seeks to achieve a mix of Board members that represent a diversity of background and experience, including with respect to race, ethnicity, gender, geography, sexual orientation, age, nationality, religious beliefs, and occupation. Although the Board does not establish specific goals with respect to diversity, **the Board's overall diversity is a significant consideration in the director nomination process.** The Company's Corporate Governance Guidelines provide that our Nominating and Corporate Governance Committee is to take into account the overall diversity of the Board when identifying possible nominees for director. The Nominating and Corporate Governance Committee implements that policy, and assesses its effectiveness, by examining the diversity of all the directors on the Board when it selects nominees for directors. The diversity of directors is one of the factors that the Nominating and Corporate Governance Committee considers, along with the other selection criteria described above. The Nominating and Corporate Governance Committee assesses the effectiveness of its efforts at pursuing diversity through its periodic evaluation of the Board's composition.

Board Diversity

The following table sets out the diversity of the Board, on an individual basis. We believe our Board of Directors is highly diverse, in terms of gender, religion, ethnicity, age, and experience and skill set.

Total Number of Directors	12	
	Female	Male
Directors	4	8
Number of Directors Who Identify in Any of the Categories Below:		
Race/Ethnicity		
African American/Black	1	1
Asian/South Asian American	2	-
White/Caucasian	1	7
LGBTQ+	1	-

Diversity, Equity and Inclusion

Our commitment to our teams and their success is unwavering. We strive to uplift, inspire, and connect people and do so in an environment that is welcoming and inclusive. Our Diversity, Equity and Inclusion (DEI) program, All-In, is part of that mission. With the support of executive leaders, All-In works to ensure Shake Shack provides equal opportunities for all, and removes obstacles or barriers to success, while also fostering a culture of inclusion and belonging. Our All-In program's initiatives include:

- **5-Year Diversity Targets**—We set time-based goals that help to focus attention, clarify accountabilities, and demonstrate our commitment to increase the diversity within our Shack and home office leadership teams. Our 5-year diversity targets were set based on analysis of our industry, demographics of the workforce at large and the changing landscape of this country, and the reality of whom we employ today. We have focused our **attention on women and people of color specifically, as we look to match the demographics of our workforce and the country at large.**
- **Employee Resource Groups (ERG)**—We strive to foster a strong internal community and awareness for diverse groups and cultures through our ERGs. Our current ERGs focus on women, Black, Hispanic, Asian and LGBTQ+ identifying team members. These are voluntary, team member led groups of people who gather based on common interests, backgrounds or demographics such as gender, race or ethnicity. These groups support both personal and professional development while helping to foster an inclusive workplace.

Workforce Diversity

We aim to be as diverse as the communities we serve, and are proud of the diversity of our workforce. We highlight the diversity of our overall workforce as well as management and leadership in our Stand for Something Good Summary, including the overall gender and racial diversity of our overall

workforce, Shack management, Shack leadership, home office leadership, our new hires, and our overall promotions. **By 2025, we are targeting 50% of our Shack leadership and 30% of our home office leadership roles to be filled by people of color** and to achieve gender parity across all leadership roles, recognizing that change takes time.

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DIVERSITY AS A BUSINESS IMPERATIVE

At Shake Shack, we're all about embracing the different views, experiences, and backgrounds of our team. Diversity strengthens our business by improving decision-making and sparking innovation. We aspire to have diverse teams at all levels of the Company to help drive better business results.

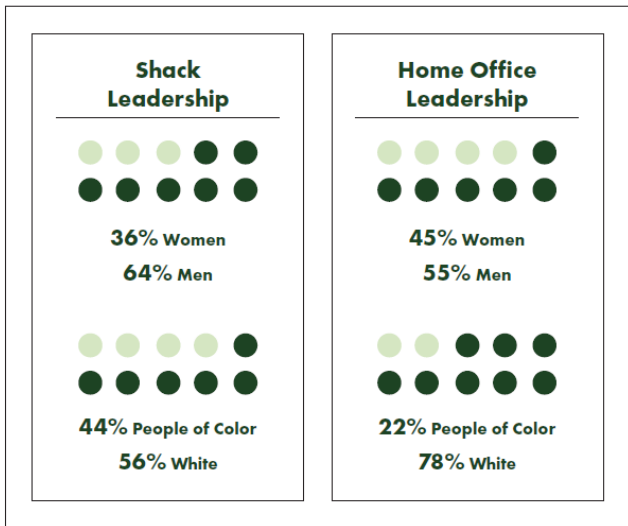
By implementing strategies that attract more diverse talent, support the unique development needs of our dynamic team, and provide leaders with training and tools to lead a dynamic team culture, we are supporting our aspiration.

By 2025, we are targeting 50% of Shack Leadership and 30% of Home Office Leadership roles filled by people of color, while also achieving gender parity across all leadership roles.

As of the end of 2023, our Shack Leadership Teams were comprised of 44% people of color and 36% women. Our recruitment strategies and partnerships, along with our growth as an organization, have created new opportunities for top talent to advance into key leadership roles.

In Home Office roles, director and above, 22% of leaders were people of color, and 45% were women as of the end of 2023. We are committed to ensuring that diverse talent is considered for all open roles, especially in these key leadership positions. We provide our people with targeted development opportunities to enhance their skills, and we continue to explore new recruiting channels and partnerships to engage diverse talent.

While we are making progress towards our goals, we acknowledge that real change takes time. We remain committed to attaining gender parity and diverse representation in terms of background, thought, and experiences for these critical leadership positions.



**Employee
Resource
Groups**



HEROIQ+ (Helping to Educate Regarding Orientation, Identity, and Queerness+)

HEROIQ+ developed a Transgender Ally Guide, sharing it Company-wide to help educate and foster more inclusion, and curated resources to support team members who transition at work and their managers in partnership with the People Resources Team.

SHE (Support. Honor. Empower.)

ERG focused on celebrating women within Shake Shack last year. They published the Women to Know Series internally, highlighting over 30 Shake Shack women from across the business, sharing how they each live the mission of SHE to support, honor, and empower other women.



Gender Equality

Advance gender equality and empower all women and girls.

Our women’s leadership development, new manager training for new people managers, and market leader training programs help our teams gain the leadership skills and confidence they need to succeed.

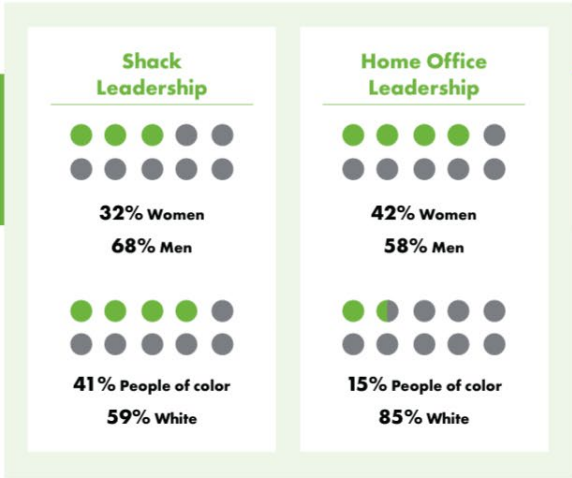
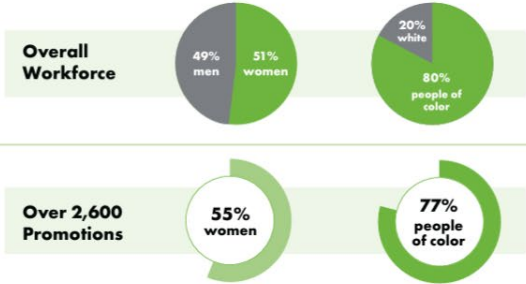


REDUCED INEQUALITIES

By the end of 2025, we are targeting that 50% of our Shack Leadership and 30% of our Home Office Leadership roles will be filled by people of color, recognizing that change takes time.

WORKFORCE DIVERSITY


We aim to be as diverse as the communities we serve. Women make up 51%, and people of color comprise 80% of our total workforce. Having diverse representation across all functions and levels of our business is key to our success and continued future growth. We know we still have a lot of work to do, and that work takes time. Our team is committed to a continued focus on diversity.




“Sharing our five-year targets helps hold us accountable to cultivate a leadership team that is diverse, but more importantly, one that is positioned to support our future growth and success.”
 — Idris Stover, Director of Diversity, Equity & Inclusion

By the end of 2025, we are targeting that 50% of our Shack Leadership and 30% of our Home Office Leadership roles will be filled by people of color and to achieve gender parity across all leadership roles, recognizing that change takes time.

At the end of 2022, people of color held 41% of Shack leadership roles, and women 32%. The representation of people of color and women has increased by 18% and 33%, respectively, since we established our 2025 diversity goals. Our continued focus on the attraction, development, and retention of diverse leadership moves us closer toward achieving our broader goals.



Increased the representation of women and people of color in Shack leadership and made progress toward achieving our five-year diversity targets.



More than 2.6k internal promotions, with 55% going to women and 77% going to people of color.

DIVERSITY, EQUITY + INCLUSION

We remain committed to having a highly diverse workforce at all levels of the company while fostering a culture of inclusion and belonging.

- We require at least two underrepresented minorities, women, or people of color to be considered and interviewed when hiring for leadership positions in our Shacks and Home Office.
- All team members are required to take our foundational diversity, equity, and inclusion (“DEI”) course which aims to help them understand what DEI means and why it’s important to Shake Shack.
- In 2023, we intend to launch unconscious bias learning modules for leaders to help them recognize bias and provide them with tools to address its harmful impacts in the workplace.