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# Diversity, Equity, and Inclusion – Strengthen the Inclusivity of their Franchise Units

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**Diversity, Equity, and Inclusion**  
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## **What is DEI**

- Diversity, equity, and inclusion (DEI) is a term used to describe policies and programs that promote the representation and participation of different groups of individuals, including people of different genders, ages, races and ethnicities, abilities and disabilities, genders, religions, cultures and sexual orientations.
- DEI initiatives are goals devised to measure acceptance of members of historically underrepresented groups (minorities and members of the LGBTQ+ community) by embracing cultural differences within the workplace. DEI initiatives should both value DEI and manage it.
  - The value of diversity is achieved through awareness, education and positive recognition of the qualities, experiences and work styles that make individuals unique (e.g., age, race, religion, disability, ethnicity) within the workplace.
  - The management of DEI expounds upon the experience and establishes the business case for DEI that is closely aligned with an employer's organizational goals.
- DEI initiatives set forth the employer's standard for proactively recruiting, hiring and promoting diverse individuals, including minorities, disabled individuals, members of the LGBTQ+ community and veterans.

## **DEI is a Business Imperative**

- Studies have shown that companies that embrace DEI achieve more financial success than those that do not. In its 2020 “Diversity Wins” report, McKinsey & Co. found that companies in the top quartile for ethnic and cultural diversity outperformed those in the bottom quartile by 36%.
- Each year, more corporate board members are instructing their own organizations and entities that provide services to their organizations, including law firms, to become more equitable, diverse and inclusive.
- Organizations benefit from DEI programs since they are able to attract and retain top talent and more rapidly drive innovative and creative solutions.

## **DEI is a Moral Imperative**

- The events of summer 2020, have refocused attention on the racial and gender inequities present in our society today. Many employers are doing their part to ensure that their workplaces are as diverse, equitable, and inclusive as possible.
- DEI is deemed a moral and social obligation to amend historical wrongs and eliminate the present effects of past discrimination.
- Employees from marginalized groups may experience several different types of negative or aggressive behaviors towards them including microaggressions and gaslighting. Members of underrepresented groups have historically been outsiders in the business world and have paid a variety of prices for lack of equity. Employees belonging to marginalized groups may choose to code-switch to fit in, which means “adjusting one’s style of speech, appearance, behavior, and expression in ways that will optimize the comfort of others in exchange for fair treatment, quality service, and employment opportunities. Code-switching comes with a psychological cost for employees who have to mute or hide aspects of who they are to fit in and succeed at work and can sometimes result in their being ostracized by members of their own group who do not choose to code-switch themselves.
- Generations of preferential treatment have put certain groups ahead and led to widening disparity with other less privileged groups. Groups that are not privileged may be marginalized, underrepresented, or underserved. DEI initiatives that seek and work to create inclusion, equity, and belonging for all, must address how this privilege operates and work to balance its impact.
- Employees from marginalized groups may experience several different types of negative or aggressive behaviors towards them including microaggressions and gaslighting.

## **DEI is not a Legal Imperative**

There is no legal requirement to implement a DEI program; DEI programs are voluntary. However, organizations that embrace DEI in general have far fewer legal issues regarding harassment and discrimination.

## **Diversity Defined**

Diversity is the presence of differences within a given setting:

- In the workplace, these differences are in race, ethnicity, gender, gender identity, sexual orientation, age and socioeconomic class.
- Diversity can also refer to differences in physical ability, veteran status, and family status.

- When we think of diversity in the workplace, we often think of physical, visible differences. This often promotes diversity of thought and the ideas that can positively impact the organization's profitability.

## **Inclusion Defined**

Inclusion is the practice of ensuring that people feel a sense of belonging

- In the workplace, this means that every employee:
  - feels comfortable and supported by the organization
  - believes they can be their authentic selves in the workplace
  - feels valued their peers and their employer
- Inclusion is more than integration

## **Equity Defined**

Equity is the act of ensuring that processes and programs are promote fairness.

- Equity recognizes each person has different circumstances and needs, therefore different **groups of people** need different resources and opportunities allocated to them in order to thrive.
- In the workplace, impartiality and perceived fairness may not be enough; equity provides for equal possible outcomes for every individual.
- Equity requires that employers recognize barriers and advantages.
- Noted limitations of Equity
  - unconscious bias is still possible
  - often assumes unreasonable similarity

## **Analogy: What happens at a dance party?**

- **Diversity** is where everyone is invited to the party.
- **Inclusion** means that everyone gets to contribute to the playlist.
- **Equity** means that *everyone* has the **opportunity** to dance.

## Doesn't equality = equity?

- Equality is giving everyone the exact same resources across the board, regardless of individuals' or groups of people's actual needs or opportunities/resources already provided to them.
- *Equality* has to do with giving everyone the exact same resources, whereas *equity* involves distributing resources based on the needs of the recipients.
  - Example: equality gives everyone the same sized pair of shoes, while equity gives everyone a pair of shoes that fit.

## Action Areas for DEI

- **Recruiting and On Boarding Talent**
  - Recruiting initiatives are often the hallmark of a DEI program as it can drive the achievement of short and long-term DEI goals.
  - Every aspect of the recruiting initiative should be strategic – the business case for recruiting members from marginalized communities must be linked to the organization's overall business objectives and goals.
  - Recruiting strategies must include recruiting from different, more diverse institution so that the backgrounds, areas of interest, and cultural experiences of the candidates are more diverse. Additionally, there must be the intentional recruitment of members of the LGBTQ+ community.
  - Bias in job advertisements must be eliminated – determine whether advertisement is unconsciously biased and thereby limiting the pool of applicants.
  - Tap into talent pools of diverse candidates (e.g. HBCU and HACU institutions) as existing approaches might fail to reach diverse talent pools.
  - Along with aggressive recruitment of diverse on campus summer interns, DEI recruiting goals can be achieved through other initiatives, including:
    1. participation in bar association and nonprofit organization sponsored internships geared towards diverse students
    2. diversity job fairs

3. scholarship/fellowship programs for high performing diverse law students
4. diversity pipeline initiatives

## ▪ **Analyzing and Monitoring Your Organization**

- Benchmark diversity, equity and inclusion across the organization with outside consultants because current decision-makers might lack the requisite competencies to uncover DEI-related gaps in programs and initiatives.
- Exit surveys are important assessment tools. The standard language used in the questions may need to be altered to obtain DEI-related information.
- Properly constructed, an exit interview can make an organization aware of issues and gaps in its DEI initiatives.
- Learn of and understand inclusion shortfalls, such as benefits that favor one group over another.

## ▪ **Developing, Retaining and Promotion of Talent**

- Retaining a diverse and inclusive workforce often determines the success of DEI programs and initiatives. It is essential to the success for the organization and speaks to whether the organization has successfully recruited and developed its human capital.
- Professional development, collegiality, and a sense of belonging are key to retaining employees. In law firms and legal departments, an assessment of the opportunities for development, an understanding of the evaluative and promotional systems, and the development of programs and policies that monitor and track evaluations, professional development, and promotion must be in place.
- A comprehensive and thoughtful infrastructure and framework is required to support the retention and advancement of all attorneys, and particularly those from underrepresented groups.
- To enhance the sense inclusion and belonging in their daily interactions with their employees, managers must be trained and incentivized.
- For example, an organization should enhance managers' soft skills so that the voices of employees from diverse backgrounds remain strong and they continue to have their sense of belonging.

- Objective performance evaluations are a must and steps must be taken to ensure that managers do not subconsciously apply inconsistent or biased criteria in performance assessments and evaluations.
  
- **Tips for a Successful DEI Program**
  - Strategic thinking is an essential part of the DEI program. Otherwise, the majority of the time can be spent simply responding and reacting to daily requests, regular reports, episodic opportunities and unexpected concerns, without creating proactive opportunities to manage the responsibilities of the initiative.
  - Strategic alliances must be struck with key entities within the organization, in order to identify objectives and goals quickly. The nature of DEI work is such that it is easy to get lost and not understand the path to success, or more basically, the definitions of success.
  - DEI is often the newest department or team in the law firm or legal organization; consequently, diversity efforts usually became part of the organization after other hierarchies, such as recruiting and human resources, have been well established.
  - It is important that the diversity initiatives be made their own independent department and that its leader be given the title and resources of the well-established departments.
  - Where the core of this initiative resides can provide insight into the organization's perception and value of its DEI efforts.
  - Who leads the effort, their title, and to whom they report reveals how the operation and function of DEI efforts are valued within the organization.
  - Effectively managed, employee resource or affinity groups are an excellent resource and complement to DEI strategies and initiatives. Employee resource groups impact law firm and legal departments and promote success in recruitment, retention and promotion of persons from underrepresented groups.
    - These groups serve as a platform and offer direct access to the networks in law schools and corporations. The group serve as a valuable professional resource for its members and their organization.
    - Affinity groups, should reflect the increased focus on aligning group objectives and goals with the business purpose of the organization. These

groups must be perceived as being inclusive and critical to the organization's mission.

- Affinity groups have been perceived by some as divisive until the business case for these groups is explained. The rationale for building and advancing such groups for these groups is explained. They add value to the organization's inclusion efforts.
- For many organizations, affinity groups existed in formally or at the grassroots level prior to being formalize by the organization. Diversity recruiting is an important aspect of any law firm and legal department diversity strategy and a recognizable benefit of affinity groups. Law school affinity groups such as Black, Asian, Hispanic, LGBTQ+ women and others, are well developed in law school culture and grown in popularity and importance. A prime benefit of law firm affinity groups is linked to student groups for direct recruiting access and communication.
- This level of access is also helpful in terms of a positive on campus branding via the organization's inclusion network interactions with like law school groups and the opportunity to go in a greater understanding of student perspectives and concerns. Law firms and legal department interaction can often take the form of participation in law school group programs and informal mentoring.
- Law firm affinity groups are also a natural link to corporate employee resource groups. They can offer firms unique opportunities to interact with corporations, clients and potential clients for the purpose of advancing joint organizational diversity and inclusion goals in advancing business opportunities.
- It is important to be cognizant of this platform and the opportunity for group members to improve and expand their professional networks, mentor informally and formally and take part in professional development and networking as part of affinity network initiative.
- In addition to network building outside organization, affinity groups promote retention and promotion through opportunities to mentor informally and cross market professional skills within the organization and the network.
- This is particularly true for groups that work together on outreach and pipeline initiatives in diverse communities. Affinity group members typically have opportunities to interact with senior members of the community which can positively promote the law firm or legal organization's brand.



- Affinity groups can serve as an extension of the legal organization’s commitment to DEI both inside and outside of the community, significantly impacting recruiting and client marketing efforts and assisting in building internal relationships which are critical to attorney satisfaction and to the retention and promotion of minority attorneys.
- A system of metrics should be a key component of a DEI initiative. To understand the data and the metrics, one must understand an organization’s systems, structures, titles, and processes and have a working knowledge of the organization’s hiring, evaluation, conversation, promotion, and leadership selection systems.
- Further one must understand the political hierarchies and appreciate the finance, human resources, and data collection processes in order to know which questions to ask to obtain the information needed to make accurate measurements and assessments.
- **Programs that focus on attorney advancement**
  - Forums and retreats provide detailed and supplemental information designed for and by affinity groups. They can provide tips on the processes on the organization and examples of excellence for written materials, as well as present insights into nuances and unpublished perspectives.
  - DEI programs with a focus on the promotion process can be very helpful in educating the members of the evaluation team and practice area leaders. Such a tailored training should focus on systematic issues identified that may have an unintended impact on the different segments of the organization.
  - Attorney monitoring programs with an emphasis on the importance of tracking hours as well as the sophistication of projects is helpful. The supervision of these programs may include an analysis of the importance of external leadership experience.
  - Programs that support lateral integration should articulate expected deliverables and timetables. There may also be policy considerations that could extend the timetable for achieving the stated goals.

## **Implicit Bias**

Bias can be defined as prejudice in favor of or against one thing, person, or group compared with another, usually in an unfair or negative way. Unconscious bias, also known as implicit bias, is defined by the [Harvard Diversity, Inclusion, and Belonging Glossary of Terms](#) as “attitudes and stereotypes that influence judgment, decision-making, and behavior in ways that are outside of conscious awareness and/or control.” When prejudice is woven into community standards, public

policies, and legal institutions it becomes systemic. In America, racism, “the belief that racial differences produce or are associated with inherent superiority or inferiority,” is systemic.

### **Everyday Work Examples of Implicit Bias**

- The “prove it again” scenario, where one must do more than anyone else to prove their competency (in one study, “Jamal” needed 8 more years’ experience to be as qualified as “Greg”)
- Walk the “tightrope,” where a narrower range of behaviors accepted
- Confront the “maternal wall,” where the commitment and competence of mothers are challenged or criticized for being (or not being) career focused
- Play “tug of war,” where one disadvantaged group is pitted against another, often based on different strategies for assimilation

### **Written in Black and White - 2014 legal profession study**

- 60 law firm partners and 22 firms given identical memo to review
  - 37 men, 23 women
  - 39 white, 21 racial/ethnic minority
- Author was presented as “Thomas Meyer”, a third-year associate from NYU Law School
- 30 partners told memo written by white associate; 30 partners told memo written by black associate

#### **▪ Results**

- White associate – 4.1 out of 5.0
  - “generally, a good write but needs to work on...”
  - “has potential”
  - “good analytical skills”
    - Technical writing errors found – 4.1
    - Spelling or grammar errors found – 2.9
    - Errors of fact found – 3.2
- Black associate – 3.2 out of 5.0
  - “needs lots of work”
  - “can’t believe he went to NYU”
  - “average at best”
    - Technical writing errors found – 4.9
    - Spelling or grammar errors found – 5.8

- Errors of fact found – 3.9
- Similar bias demonstrated by black/white and male/female reviewers

## Conformation Bias

- A mental shortcut engaged by the brain that makes one actively seek information, interpretation, and memory to only observe and absorb that which affirms established beliefs while missing [or ignoring] data that contradicts established beliefs.
- Ways to Combat Confirmation Bias
  - Blind evaluations for some projects
  - Make evaluators aware of confirmation bias
  - Training on unconscious bias for all evaluators
  - Offer writing assistance to all to avoid reinforcing bias
  - Orchestra auditions
  - Skills-based assessment without individual identified
  - Commit to total inclusion
  - Expand diversity

## Implicit Association Test

- Another test seeking to identify implicit bias by measuring the time differences in matching words and pictures. See [www.implicit.harvard.edu](http://www.implicit.harvard.edu) )
- Categories measured in IAT

Age	Religion
Weight	Presidents
Gender-Career	Arab-Muslim
Disability	Race
Sexuality	Gender
Skin-Tone	Weapons

## Stereotypes

- Automatic conclusion based upon perceived membership of some group that the person has certain characteristics or behaviors
- Can be positive or negative
- Can be benign or harmful or lethal

## **Likely Reason for Lack of DEI**

Many organizations treat DEI as an afterthought instead of integrating it fully within the organization – DEI is not a priority until it is a visible, integral part of the organization’s strategy.

## **It is Illegal to Discriminate or Harass in the Workplace**

- Title VII of the Civil Rights Act of 1964 prohibits discrimination regarding the terms or conditions of employment based on color, national origin, race, religion and gender (including sexual orientation and gender identity). Other laws such as the Americans with Disabilities Act, prohibit discrimination based on age, disability, genetic information, and other categories.
- These laws strictly prohibit discrimination in employment practices including selection, hiring, promotion, transfer, compensation, discipline, termination, and all other terms and conditions of employment.
- These laws also strictly prohibit retaliation or adverse employment action against any employee who exercises their rights any antidiscrimination laws, or who cooperates or participates in any investigation or proceeding conducted or pursued by any governmental agency.
- There are also laws that prohibit harassment, i.e., unwelcome conduct, whether verbal, physical or visual, that is based upon the individual’s protected characteristic, such as sex color, race, ancestry, religion, national origin, age, disability, marital status, sexual orientation, gender identity, military or veteran status, citizenship status, or any other characteristic protected by federal, state or local law.
- Harassing conduct affects tangible job benefits, interferes unreasonably with an individual’s work performance, or creates an intimidating, hostile or offensive working environment. Harassment may include, for example, jokes or epithets about another person’s protected status, or teasing or practical jokes directed at a person based on his or her protected status.
- Prohibited harassment may also take the form of other vocal activity including derogatory statements not directed to a particular individual but taking place within their hearing.
- Other prohibited and illegal conduct may include written materials such as notes, photographs, cartoons, articles of harassing or offensive nature, and taking retaliatory action against an employee for discussing or making a harassment complaint.

- Sexual harassment crosses age and gender boundaries and cannot be stereotyped. Prohibited sexual harassment is defined to include unwelcome sexual advances, requests for sexual favors, and other verbal, physical or visual conduct based on sex when (1) submission to such conduct becomes an implicit or explicit term or condition of employment; (2) submission to or rejection of the conduct is used as the basis for any employment decision, or (3) the conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.
  - Sexual harassment is not limited to explicit demands for sexual favors. It can include other unwelcome conduct based on sex, whether directed toward a person of the opposite or same sex, such as (1) sex-oriented verbal kidding, easing or jokes; (2) repeated sexual flirtations, advances or propositions; (3) continued or repeated verbal abuse of a sexual nature; (4) graphic or degrading sexually-oriented comments about an individual or his or her appearance or sexual activity; (5) visual conduct, including leering, making sexual gestures, or the display of sexually suggestive objects or pictures, cartoons or posters; (6) pressure for sexual activity; (7) suggestive or obscene communication including, but not limited to, letters, notes, e-mails, or invitations; or (8) offensive physical contact such as patting, grabbing, pinching or brushing another’s body.

### **It is Unethical for an Attorney to Discriminate or Harass**

ABA Model Rule 8.4(g) states that it is professional misconduct for a lawyer to:

- engage in conduct that the lawyer knows or reasonably should know is
- harass or discriminate based on race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, or socioeconomic status.

The Comments to ABA Model Rule 8.4(g) explains that:

- such discrimination includes harmful verbal or physical conduct that manifests bias or prejudice toward others
- the model rule includes sexual harassment and derogatory or demeaning verbal or physical conduct
- sexual harassment includes unwelcome sexual advances, requests for sexual favors or other unwelcome verbal or physical conduct of a sexual nature

“Conduct related to the practice of law” is defined to include behavior both in one’s office and in court, e.g.,

- Bar activities
- Operating and managing a law firm or law practice
- The discrimination prohibitions were moved Comment Rule
- Previously limited to acts “prejudicial to the administration of justice”

- Changes from “in the course of representing the client” to conduct “related to the practice of law”
- Protected classes expanded: ethnicity, gender identity, and marital status

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