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Diversity and Inclusion Matters. Now What?

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By now, most of us have seen the research and buy into the idea that a diverse and inclusive workforce is important to success. Businesses are looking for their outside counsel to make diversity and inclusion a priority. If you have not seen diversity and inclusion questions on a recent request for proposal or in an outside counsel interview, you will. And that's a good thing.

Clients are starting to demand that their outside counsel prioritize diversity and inclusion efforts. Clients want lawyers who can integrate their legal analysis into the core business, strategy and culture. Yet, most law firms have struggled with how to accomplish true diversity and inclusion. Women, LGBTQ+ and lawyers of color continue to be underrepresented in leadership at law firms.

During the pandemic, the shift to a virtual workplace has presented interesting impacts on inclusion. In a study by Coqual, a global think tank on workplace diversity, one of the top themes voiced by diverse lawyers was that they felt excluded from social events outside of work. With the pandemic, those social events are now gone, and many suggest the playing field has been leveled in some ways. However, the Coqual study also found that diverse professionals were more likely to have experienced pandemic-related trauma than their non-diverse counterparts, which negatively affected their feelings of belonging "at work" during the pandemic in significant ways. In the wake of the pandemic, economic distress and social unrest, "[c]ompanies are being called upon to dismantle bias within their organizations, and that means they need to look inward at their corporate cultures to understand what makes it so hard for certain groups to advance," said Lanaya Irvin, president of Coqual.

While there is no single, easy roadmap for how to accomplish a diverse and inclusive workforce, here are some concrete tips.

Promote a culture of belonging

Inclusion comes down to company culture and communication. The best way to shape company culture is through leading by example (not just at the top, but through lower-level managers, too), implementing policies that reflect the core values of the business and, perhaps most importantly, employee training. In the labor and employment space, we are seeing more and more businesses incorporate diversity and inclusion into their annual training for managers and employees

on other important workplace issues like harassment and discrimination. Critical to this training is arming the workforce with tools and strategies to successfully communicate across differences.

Promote the recruitment, retention and advancement of diverse lawyers

This can be tricky.

Recruitment: There are several resources available to law firms designed to help identify talented, diverse lawyers. For new hires out of law school, examples include the Southeastern Minority Job Fair and the Diverse Attorney Pipeline Program (DAPP).

Law firms can also consider becoming Mansfield Certified, a program that has gained traction with Big Law firms in recent years. Named after Arabella Mansfield, the first woman admitted to practice law in the U.S., the Mansfield certification process requires firms to consider two or more candidates who are women, LGBTQ+ or attorneys of color when hiring for leadership and governance roles, promotions to equity partner and hiring lateral attorneys. To be considered "Mansfield Certified," a firm must show that 30% of the candidate pool for these positions are diverse. Mansfield Certification has become an attractive badge of honor to sell to potential clients who value diversity and inclusion and expect the same when interviewing outside counsel.

Retention and advancement: Research shows that diverse lawyers are not given the same opportunities to fail safely, meaning that they do not recover from failure as easily as non-diverse lawyers. After a set-back, diverse lawyers tend to be given the "polite no thank you," meaning that instead of the senior lawyer providing constructive feedback and a second chance, the senior lawyer simply writes off the diverse lawyer and does not use him or her on future projects. Law firms must make a point to give all lawyers the opportunity to learn and grow, which means taking the time to give constructive feedback and offering second chances. Sponsorship and mentorship are also critical to the retention and success of diverse lawyers. While mentors provide advice and guidance, a true sponsor puts his or her reputation on the line to promote someone else. Sponsorship could mean recommending the diverse lawyer for a project, referring him or her a client, taking them on a client pitch or trusting him or her to handle a matter.

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Make it a priority

Critical to the success of creating a diverse and inclusive workforce is making it a priority. That means more than just having a diversity and inclusion mission statement on your website. Some firms have created an annual “Champion of Diversity Award” to recognize colleagues who have devoted substantial time and effort to the promotion and advancement of diverse lawyers.

Law firms should also consider adding diversity and inclusion criteria in their annual reviews and individual business plans and goal setting. Examples include:

- What has the attorney done this year to advance the firm’s diversity and inclusion mission?
- What does the attorney plan to do next year to advance the firm’s diversity and inclusion mission?
- Has the attorney staffed cases or matters with diverse lawyers?
- Has the attorney included a diverse attorney in a client meeting or pitch?
- Has the attorney attended diversity and inclusion CLEs or trainings on the subjects of race, sex, gender orientation, intersectionality and other applicable topics?
- Identify at least one diverse attorney you plan to staff as a billing attorney on your matters this year.
- Identify at least one diverse attorney you plan to include in a client meeting or client pitch this year. If the client pitch is successful, ensure the diverse attorney is staffed on the new matter.
- Identify sponsorship opportunities for junior attorneys and at least one diverse attorney.

None of this easy, but it takes training and practice. You can read as many books about water skiing as you want, but the first time you try it, you will fall (in fact, you may not even make it up onto the skis). But with practice, you can improve. We all can improve.

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