

Driving Diversity in Business: How Corporate Law Divisions Respond to the Opportunity

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Program Materials

1. PowerPoint Presentation

Reference Materials

For more information on **Labor and Employment** matters, see Dorsey's *Quirky Questions Blog* at <https://quirkyemploymentquestions.com/>.

Dorsey's **Labor & Employment Law Guides** on varied legal issues, at both the federal and state level at <https://www.dorsey.com/services/labor-employment-guides>.

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1

Agenda

- **Overview: Elimination of Bias CLE**
- **Background: Discussion of Implicit Bias**
- **Recruiting and Hiring: How Corporate Law Divisions Can Actively Recruit and Hire Diverse Talent**
- **Diversity and Inclusion: How Corporate Law Divisions Can Improve Retention of Diverse Employees**
- **Strategies for Eliminating Bias**

2

Meet the Panel:

- **Rebecca Bernhard, Dorsey & Whitney**
- **Gregory Cunningham, U.S. Bancorp**
- **John Geelan, Piper Jaffray & Companies**
- **Jennifer Lee, Dorsey & Whitney**
- **Jim Rowader, Target Corporation**

3

Overview

4

Elimination of Bias CLE

- **Minnesota passed a resolution requiring elimination of bias CLE in 1995**
- **American Bar Association resolution passed in 2016 encourages all states to follow the lead**

5

Background: Discussion of Implicit Bias

6

Discussion of Implicit Bias

- **What is implicit bias?**
 - “Also known as implicit social cognition, implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.”
 - Automatic
 - May be positive or negative
 - Do not necessarily align with our declared beliefs
 - Do not necessarily reflect stances we would explicitly endorse

(Kirwan Institute for the Study of Race and Ethnicity,
The Ohio State University)

7

Discussion of Implicit Bias

- **How does implicit bias affect us?**
 - Causes us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, age, and appearance
 - Associations begin to develop at early ages in response to direct and indirect messages
 - Media and news programming are often-cited origins of implicit associations

Kirwan Institute for the Study of Race and Ethnicity,
The Ohio State University)

8

Discussion of Implicit Bias

- **How is implicit bias identified?**
 - **Implicit Association Tests (IATs)**
 - Aim to identify thoughts and feelings outside conscious awareness and control
 - Assess presence of automatic preference and correlation of positive and negative feelings

9

Discussion of Implicit Bias

- **How is implicit bias identified?**
 - **Project Implicit**
 - Collaboration among Harvard University, University of Virginia, and University of Washington researchers
 - Provides web-based IATs on broad range of characteristics, including:
 - Race (European vs. African faces)
 - Age (young vs. old faces)
 - Weight (heavy vs. thin silhouettes)
 - Disability (symbols representing abled and disabled individuals)
 - Skin tone (light vs. dark)
 - Arab/Muslim (likely names)
 - Sexuality (terms and symbols associated with gay and straight people)
 - See <https://implicit.harvard.edu/implicit/selectatest.html>

10

Discussion of Implicit Bias

- IAT assessments reveal automatic associations
- IAT assessments reveal differences between self-perception and automatic associations
 - Race and skin tone often cited:
 - More than 50% of participants in the IAT on skin tone self-report no preference
 - But only 19% actually show no automatic preference
 - 68% show an automatic preference for light skin over dark skin to at least some degree

11

How to Minimize the Impact of Implicit Bias

- Understand it exists
- Understand what your own implicit biases may be (take an IAT)
- Be aware that we all tend to feel affinity for people to whom we are similar – and so may associate with (or hire, or promote) people who are similar to us
- Question your initial assumptions about others – is an implicit bias at play?

12

Other Types of Bias

- **Explicit Bias**
 - Aware of and act upon negative stereotypes and attitudes
- **Prove-it Again Bias**
 - Women, racial/ethnic minorities must prove competence repeatedly
- **Maternal Wall Bias**
 - Assumption that mothers who work are less dedicated
 - Opportunities and challenges pre-judged and not offered
- **“Mansplaining” or “He-Peating”**
- **Immigration Issues: “Where are you from?”**

13

“He-Peating,” Illustrated

Image omitted

14

Potential Areas Where Bias Affects Workplaces

- Recruiting
- Hiring
- Making assignments
- Evaluating, coaching, disciplining, promoting
- Work-life balance
- Leaves of absence
- Succession planning
- “Mistaken identity” in the workplace

Verna Myers, *Moving Diversity Forward: How to Go From Well-Meaning to Well-Doing*, Chapter 1.

15

Business Consequences of Bias

- Environment does not reflect organizational values
- Low morale among those subject to unfair treatment
- Low morale among those who see others subjected to unfair treatment
- Higher attrition and turnover – operational inefficiencies and costs
- Impact on brand – reputation among industry peers, vendors, and clients
- Litigation poses reputational and actual costs

16

Implications of Bias for Lawyers

- Rules of Professional Conduct
- Federal and state laws prohibiting discrimination

17

Take-Away

- **“Elimination of Bias” is a misnomer when it comes to implicit bias, which can be understood and addressed – but not eliminated**
- **Goal is to become aware of our otherwise unconscious biases and avoid automatic responses based on them**
- **Interrupt implicit bias**

18

Recruiting and Hiring: How Corporate Law Divisions Can Actively Recruit and Hire Diverse Talent

19

Developing a Diverse Pipeline

- **Play the long game**
- **Minnesota high school and undergraduate student initiatives**
 - Minnesota Urban Debate League
 - AchieveMpls Graduation Coach Program
 - Just the Beginning
- **HCBA 1L Minority Clerkship Program**
- **TCDIP**
 - Ambassador Program
 - Professional Development (Elimination of Bias CLE!)
 - 1L Summer Rotation Clerkship
 - Sponsorship Program

20

Developing a Diverse Pipeline

- **Employ diverse talent recruitment agencies**
 - Corporate Counsel Women of Color
 - Veteran recruitment agencies
- **Attend diverse career fairs and events**
 - Lavender Law Career Fair & Law Conference
- **Promote your organization as a supporter of diversity in the legal profession**
 - Get involved with diversity organizations
 - Minority Corporate Counsel Association (MCCA)
 - Host diversity/affinity organization events
 - CLEs, seminars, law school student groups and minority bar associations

21

Developing a Diverse Pipeline

- **Get the word out about what it means to work in-house**
 - Explain the benefits
 - Volunteer
 - Speak on panels
 - Targeted recruitment
 - Historically black law school alumni associations
 - Diverse bar associations
 - DAPP: supports women of color law students
- **Take a “recruiting journey”**
 - Attend MCCA and minority bar meetings
 - Take a list of open positions and recruit on the spot
- **Implement a new attorney training program (reverse secondment)**

22

Cast a Wider Net

- **Don't just hire people who "walk and talk like you"**
 - Counteract the tendency toward similarity bias
 - Self-reflection
 - Ask tough questions
- **Perceived v. actual diversity**
 - Ethnicity, race, gender, religion, disability, LGBTQ
 - Ideology, socioeconomic community, education
 - Different ways of thinking

23

Hiring Best Practices

- **Emphasize the importance of a diverse workforce that reflects your customers**
- **Form a diverse hiring team**
 - Gender, ethnicity, LGBTQ and differing levels of experience
- **Create opportunities to meet with a diverse array of attorneys during the interviewing process**
- **Do not conduct "social media background checks"**
- **Leverage your Affirmative Action Plan**

24

Consider Diversity When Hiring Outside Counsel

- **2004 A Call to Action**
- **2014 Engage Excellence Program**
 - DuPont, General Mills, Verizon and Walmart
- **2016 ABA Resolution 113**
- **2016 Mansfield Rule (“Next Generation Rooney Rule”)**

25

Examples of Extraordinary Diversity Efforts

- **3M**
- **General Mills**
- **Piper Jaffray**
 - 2020 Women on Boards
- **Target Corporation**
 - Ranked #22 on TheDiversityInc Top 50 Companies for Diversity
- **U.S. Bancorp**
 - A 2018 Forbes Magazine “Best Employer for Diversity”
- **Wells Fargo**
- **Xcel**

26

Diversity and Inclusion: How Corporate Law Divisions Can Improve Retention of Diverse Employees

27

Diversity v. Inclusion

- **Diversity = quantity**
 - “When you don’t hold people to standards of excellence, deep down you are indicating that you don’t think you can find talented black people to meet your standards.”
- **Inclusion = quality**
 - “Unless the environment, the friendship, the neighborhood, and the workplace are inviting, fair, and respectful, diversity is not going to thrive.”
 - “What I have noticed is that trying to be *nice* often stands in the way of creating real inclusion. It prevents action or creates a situation where black people are ignored or coddled, rather than engaged and challenged.”

Verna Myers, *Moving Diversity Forward: How to Go From Well-Meaning to Well-Doing*, Chapter 1.

28

Diversity v. Inclusion

Metrics Don't Automate Inclusion!

- The employee experience begins with an offer letter.
- To nurture and promote top talent – and to foster a truly inclusive environment – it's critical to take an honest look at the end-to-end employee experience.

29

Buy-In from the Top

- “Diversity and Inclusion” is often treated as a single, stand-alone initiative that exists in a silo.
- Creating a culture of belonging should be viewed as a **business imperative**.
 - To effect meaningful change, the entire C-suite should be prepared to stand behind steps to integrate tangible inclusion expectations across all aspects of day-to-day operations.
 - Studies show there are compelling business reasons to do so!

30

Buy-In from the Top

Evelina Silveira, President Diversity at Work in London Inc.:

- **Buy-in from the top involves:**
 - **Who:** Do you have the **right person** spearheading diversity and inclusion efforts at your Company?
 - **What:** Are you sending the **right message** to the leadership team?
 - **When:** Are your efforts to integrate diversity and inclusion measures **in line** with other business initiatives?
 - **Why:** Does leadership understand the **business case** for diversity and inclusion?
 - **How:** Do you have a **strategic plan** to help leadership understand the long-term goals and how to achieve them?

31

Change Management

1. Assess any barriers or resistance to change
2. Identify leaders at every level of the organization
3. Make the formal case for change – “vision statement”
4. Create “ownership incentives”
5. Prepare integrated and ongoing communication
6. Be explicit and detailed about the desired cultural goals
7. Continue to reassess over time
8. Make it personal!

32

Best Practices for Creating and Maintaining an Inclusive Culture

- Gain leadership buy-in
- A “top down” approach isn’t enough – change must be managed across the organization at all levels
- Inclusion is an ongoing and holistic goal – it cannot be obtained through a stand-alone committee or a one-off training
- Know your “blind spots” and establish tangible measures to overcome them
- Use measurements and incentives to track and promote success
- Look to other organizations and industries for practical strategies that work
- Continue to question your organization’s assumptions and biases

33

Inclusion Fosters Retention

- Diverse groups may suffer from turnover when stereotypes and favoritism divide people into in-groups and out-groups
- Inclusive leaders form high-quality relationships based on shared power, mutual trust, respect, and obligation
- Inclusive leaders both value their employees’ unique diversity and also find a common ground to foster a sense of belongingness

Lisa H. Nishii and David M. Mayer, “Paving the Path to Performance: Inclusive Leadership Reduces Turnover in Diverse Work Groups,” *Cornell Center for Advanced Human Resource Studies Research Link*, no. 3 (February 2010)

34

Successful Strategies

- Judge Jack B. Weinstein, Eastern District of NY
- Hollywood, **#inclusionrider**
- Pledge to the Profession
 - <http://www.theiilp.com/Resources/Documents/PledgetotheProfessionForm.pdf>
- Target
 - Diversity Action Committees (DAC)
 - NAMWOLF Pledge
 - “Ban the Box” and White House Fair Chance Business Pledge
- U.S. Bancorp
 - Global Inclusion and Diversity Office
 - The CEO Action for Diversity & Inclusion
 - Multimillion dollar multicultural marketing campaign

35

Best Practices for Retaining Diverse Attorneys and Staff

- **Transparency:** Provide information about the department’s goal to be more diverse
- **Evaluation System:** Carefully consider how to solicit feedback in a manner that reflects the attorney’s role (e.g. feedback from clients? Supervisors? etc.)
- **Development Opportunities:** Flat organizations find creative ways to provide development opportunities to in-house counsel
- **Training:** Take advantage of training through law firms with whom you have strong relationships
- **Sponsors:** Sponsors create opportunities for their sponsorees (e.g. stretch assignments)

36

Best Practices for Retaining Diverse Attorneys and Staff

- **Provide multiple learning opportunities:**
 - Peer-to-peer coaching
 - Action learning projects
 - Mentoring
 - Collective team off-site meeting
- **Mentoring: Establish a robust mentoring program with measurable goals**
- **Metrics: Measure department leaders' hours spent participating in diversity efforts**
- **Pro Bono Activities: Support community activities that have an impact on diversity in the profession and the community**

37

Strategies for Eliminating Bias

38

Strategy: Self-Reflection

- **Self-reflection**
 - **Ask:**
 - Who is getting hired? Who is getting promoted?
 - Am I building relationships with people who are different from me?
 - **Be aware of the signals you give**
 - Negative facial expressions
 - Dismissing an idea from one employee, but embracing the same idea from another
 - Leaving someone off a group email
 - Addressing some employees by chummy nicknames
 - Continually mispronouncing one employee's name

39

Strategy: Acknowledge Bias

- **Do not hide from bias**
 - “Hidden biases” are often quite noticeable
- **Colorblind v. positive acknowledgement policies**
 - Awareness of existence of disparities in treatment helps eliminate disparities in decision making
- **Create a diversity task force**
- **Conduct regular training on implicit bias**
 - Starbucks: every employee speaks for your organization
- **Demonstrate commitment from leadership**

40

Strategy: Create a Sense of Belonging

- **Allow more-senior employees to share their early experiences with newer employees**
 - “In the beginning, it was hard...”
 - “I felt I didn’t belong...”
- **Stanford University study: students who read testimonials from more senior students regarding their social difficulties academically outperformed their peers in the control group**
- **Employee Resource Groups**
 - Target Corp. and U.S. Bancorp examples

41

Thank you

42