



# Building a More Inclusive Law Firm

## *5 Questions Every Firm Needs to Ask*

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Diversity initiatives in the legal industry have been widely discussed, covered by numerous surveys, analysis and reports, and anecdotes. Opinions vary dramatically regarding the relative successes and the challenges faced by these initiatives. Nevertheless, one aspect seems clear: diversity will be discussed for years to come, perhaps longer.

The legal industry as a whole has embraced diversity, at the very least in name, and this is clear from the blue ribbon panels, “Diversity Chair” positions at law firms, and strong efforts to recruit diverse attorneys directly out of law school. Every year, multiple publications release reports on the current state of diversity in the legal industry. If anything, the diversity discussion has increased in velocity and intensity, becoming a permanent part of how we think about the work place.

Despite the embrace and improvements in diversity figures, the legal industry still faces challenges. Even as top-tier law schools graduate more minority attorneys, only 12 percent of practicing lawyers are women or minorities, according to the National Association for Law Placement (NALP) [2016 Report on Diversity in U.S. Law Firms](#). Representation is even less at the partner and equity partner level. The reasons for this lack of inclusion are complex and systemic: everything from [traditional firm evaluation models](#) to [social capital limitations](#) can impact advancement opportunities and lateral mobility.

Headlines like “[Law is the Least Diverse Profession in the Nation](#)” and “[Diversity in the Legal Profession Has Flatlined Since the Great Recession: Who is to Blame?](#)” suggest the failing of diversity initiatives and the urgent need for change. But what many of these stories miss is a deeper dive into what diversity truly means to individual firms and companies, leadership, and individual attorneys.

As a former practicing attorney and current legal recruiter, I’ve had many candid discussions with attorneys, hiring managers, and diversity managers. The insights shared in these conversations are incredibly valuable in understanding how different people and different entities view diversity. Put simply, diversity is, by definition, a broad enough idea to encompass any number of values. This paper does not offer any critiques of diversity initiatives. Rather, this paper attempts to synthesize the diversity discussion in the context of how firms and companies can assess what diversity means internally and take steps to execute on a strategy.

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## Legal Diversity: Where We Stand Today

Law is not the only white collar profession struggling with diversity, but few industries have dedicated as much time, energy and resources to building a more inclusive profession and come up so short. The greatest disparity is at the top: minority women represent 2.76 percent of partners and minority men account for 5.29 percent of partners. In a report for the American Bar Association meeting in 2016, outgoing president Paulette Brown expressed her frustration at these figures, writing, “I have grown weary of discussing statistics that have not changed in decades and wondering why strategies used have not made our profession fully inclusive.”

Brown’s frustration is certainly justified. In 2009, African-American lawyers represented 1.71 percent of law firm partners. Today, African-American lawyers represent 1.81 percent of partners. Asian Americans and Hispanics make up 3.13 percent and 2.31 percent of partners, respectively. Representation for both groups has increased by less than one percent since 2009, according to National Association for Law Placement (NALP) [2016 Report on Diversity in U.S. Law Firms](#).

Part of the problem, according to NALP’s current Executive Director James Leipold, is that layoffs during the recession of 2008 and 2009 disproportionately affected junior associates, generally the most diverse part of a firm, and recent inclusion efforts have still not bridged this gap. Recruiting a diverse class is only one piece of the puzzle. Firms must also assess why their attrition rates are disproportionately higher for females and minorities than for white male attorneys. For example, the [New York City Bar Association’s 2015 survey of law firm members](#) found that attrition rates were 43 percent higher for female attorneys and 62 percent higher for racially/ethnically diverse attorneys than for white male attorneys.

Leipold also cautions that national diversity figures mask significant differences by law firm size and geography. For example, the percentage of minority partners is highest in Miami (31.08%), followed by the San Jose area (17.3%), the Los Angeles area (15.18%), Orange County (13.74), and San Francisco (13.44%). Leipold notes that the largest firms have achieved much greater diversity than smaller firms.

Recently, law firms have begun tackling diversity challenges with a renewed sense of urgency. It’s not just a desire to create a more fair and inclusive firm that is driving these initiatives. Law360 argues that the diversity problem places the legal industry on a crash course with Millennial lawyers, who are highly attuned to institutional bias and increasingly vocal about eradicating it. “If our law firms do not develop a cadre of leadership to reinforce this notion of credibility and faith in our legal institution, we’re going to have a real problem,” Husch Blackwell LLP Chairman Maurice Watson told [Law360](#).

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It’s not just tomorrow’s talent that cares about diversity. Corporate legal departments are pushing firms for leadership diversity—and they’re asking for data to prove firms are following through. In April, Facebook began requiring outside counsel to field teams with at least “33 percent women and ethnic minorities” as attorneys. The firms must also demonstrate that they are actively creating “clear and measurable leadership opportunities for women and minorities” reports [Bloomberg](#).



Facebook's announcement comes on the heels of a similar announcement made by HP in February. HP announced it would begin withholding up to 10 percent of invoiced amounts from law firms that don't field at least one "diverse relationship partner" or at least one woman and one "racially/ethnically diverse" attorney each performing at least 10 percent of the billable hours on HP matters.

At NBCUniversal, General Counsel Kimberley Harris and her team generate diversity statistics on pending matters on a quarterly basis. Harris told Bloomberg Law her goal is to help more firms identify and support a diverse group of mid-level associates on their path to partner.

"Law firms usually do a good job of bringing in diverse classes," she said. "But when you get to mid-level and people who could be considered for partner, there are very few people left." Harris plans to work with law firms to identify fourth, fifth and sixth-year associates, put them on NBC matters, and develop the kinds of relationships that will put them in a strong position to be made partners.

In June, 30 BigLaw firms announced they had signed on to the "Mansfield Rule", which will require 30 percent of firm leadership candidates to be minorities and women. The 30 firms, which include DLA Piper, Paul Hastings, Jenner & Block, Morrison & Foerster, Blank Rome, and White & Case, will be designated as "Mansfield certified" and be able to send their recently promoted diverse lawyers to meet with general counsel from 45 legal departments at a client forum. Advocates of the rule hail it as a promising solution for holding the legal industry accountable, noting, "[Systemic problems require systemic solutions.](#)"

## **Towards a More Inclusive Firm: 5 Questions to Ask**

For the hiring manager or the internal recruiters at law firms and companies, understanding your own employer's diversity plan or initiative is an important task. Take the time to dive deeper into your firm's underlying diversity philosophy and the true value of inclusion efforts. Public diversity statements do not always reflect internal diversity communications or the day-to-day reality of firm life. Treating diversity and inclusion programs only as "one-offs" will fail to ingrain diversity into your firm's culture. Instead, consider how your diversity initiatives serve your company or firm's brand.

Consider these five questions to jump-start the planning process:

- Why is diversity important to my firm?
- What does diversity mean to my firm?
- How can we achieve buy-in at every level for diversity inclusion efforts?
- How can we assess diversity initiatives and use feedback to drive meaningful improvement?
- How can we use external relationships to drive our diversity initiatives?

### **1. "Why is diversity important to my firm?"**

Building an inclusive firm is not just "the right thing to do"; it is a contemporary business imperative. In today's competitive legal marketplace, your firm's brand is vital to attracting top talent, and top Millennial talent wants next gen corporate leadership that reflects their diversity values.



Diversity is important not only for attracting top talent, but also for maximizing the impact of your current roster. There's an assumption that diversity can be an "[innovation catalyst](#)" that leads to different perspectives and novel solutions. Research consistently shows that diverse teams outperform homogenous groups not just for greater innovation, but also for greater productivity, better decision-making, and enhanced organizational performance. Certainly a diverse team brings a more varied and nuanced perspective to problems, but this is not the only cause. According to research published by [Scientific American](#), "When you introduce a socially different newcomer into a homogeneous group, it causes existing group members to work harder cognitively." In short, building a diverse legal team will push everyone on the team to be more creative, more diligent, and harder working. Inclusive policies are not just about fairness; they're also about smart business.

## 2. "What does diversity mean to my firm?"

"Diversity" is not easily summed up as a 50-50 male/female partner split or, in the case of the Mansfield Rule, requiring 30 percent of partners or equity partner candidates to be minorities. Gender, race, religion, sexual orientation, and physical disability inclusion cannot be boiled down to a statistic or number.

A true commitment to diversity must go beyond recruiting an inclusive first year class and consider the advancement pathway towards partnership. Your firm should consider whether its policies are in sync with diversity goals and how these policies can best support career trajectories for all associates.

Your firm may also wish to consider its approach to inclusion: does your firm follow a "value in equality" (VIE) approach, a "value in difference" (VID) approach or a combination of both? According to 2016 study by the American Psychological Association, these two approaches can yield very different outcomes, especially when it comes to stemming the attrition tide. Researchers found a correlation between the type of diversity-related statements on law firms' websites and attrition rates among female and racially/ethnically diverse associates in those firms. According to a research summary published in May 2017 by the [American Bar Association](#):

The first approach—"value in equality" (VIE)—was evidenced by several phrases focused on ensuring fair and equal access to opportunities in the firm based on one's accomplishments, irrespective of social group membership. The second approach—"value in difference" (VID)—was found in phrases that focused on the importance of social group differences for conducting business, but also for creating a climate that is open, inclusive, and sensitive to issues of diversity. The study determined that women and racially/ethnically diverse people respond differently to each approach... No approach to talking about differences and diversity will work uniformly well across groups and contexts.

That last line – "no approach to talking about difference and diversity will work uniformly" – is key. Nuance matters. As your firm cultivates a deeper understanding of diversity, this must include developing a more nuanced approach to internal and external communications. Be careful to avoid creating a perception that your firm only "talks the talk". Be specific in communications and reference concrete action your firm is taking, including efforts to achieve buy-in at every level for initiatives and continually evaluate and improve these initiatives.



### 3. “How can we achieve buy-in at every level for diversity inclusion efforts?”

Ensuring buy-in at every level is essential to tackling inclusion gaps. The challenge? Not all legal professionals believe that diversity continues to be a pressing issue the way it was 20 or 30 years ago.

“Many lawyers believe that barriers have come down, women and minorities have moved up, and any lingering inequality is a function of different capabilities, commitment, and choices,” argues Deborah L. Rhode, the Ernest W. McFarland Professor of Law, the director of the Center on Legal Profession, and the director of the Program in Law and Social Entrepreneurship at Stanford University in a [Washington Post think piece](#).

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This disconnect is not unique to the legal industry. From business to medicine, there is a persistent theory that women lower their career goals with age and motherhood. Women are less likely to be executive leaders not because there’s a lack of opportunity, but because they make other choices. Recent research from [Boston Consulting Group](#) proves otherwise. BCG found that while women’s ambition levels do vary, they vary by company, not by family status. “When companies create a positive culture and attitude regarding gender diversity, all women—mothers included—are eager to advance. . .Ambition is not a fixed attribute but is nurtured—or damaged—by the daily interactions, conversations, and opportunities that women face over time.”

BCG’s findings underscore why it is so critical for firms to achieve diversity buy-in at every level. If partners genuinely believe a lack of representation at higher levels is because women and minorities opt out, diversity initiatives that fail to address this belief structure will fall flat.

### 4. “How can we assess diversity initiatives and use feedback to drive meaningful improvement?”

Diversity policy development and implementation should be treated the same as any business objective: set a goal, determine benchmarks, create feedback loops, and backward plan to meet this goal. Your firm should also assess how its approach compares to the broader legal market place. What best practices can be learned from a competitor’s approach?

Numerous consortiums and affinity groups have formed across industries involving many of your peer companies and firms that address diversity. Consider how membership in or a relationship with these networks could help your company or firm address diversity or execute on a strategy. Last June, more than 150 CEOs from companies such as Accenture, BCG, Deloitte US, EY, New York Life and PwC signed on to the CEO Action for Diversity & Inclusion. To date, it is the largest CEO-driven business commitment to advance diversity and inclusion in the workplace. Their website [CEOAction.com](#) serves as a hub for information sharing, idea generation and program development. In short, learning from peer competitors can help you get a sense of best practices in a relevant industry.

### 5. “How can we use external relationships to drive our diversity initiatives?”

In addition to understanding your own internal values, your external resources can help further your own diversity goals.

For law firms and legal in-house departments, the Leadership Council on Legal Diversity has become a strong



network and rich resource for the legal industry. To date, the organization has over 265 members – either general counsel of major corporations or managing partners of law firms. Their mission is to create a truly diverse U.S. legal profession.

Finally, working with external recruiters who understand your diversity goals, and in particular what diversity means to your company or firm, can further help produce a pipeline of diverse talent for you to hire. Developing a sophisticated approach to inclusion won't happen overnight. A number of recruiters and agencies will undoubtedly market or present themselves as champions of diversity. The right recruiter will take the time and care to discuss your company or firm's values and demonstrate they truly understand your objectives.

### **Next Steps: Taking Action at Your Firm**

Diversity is not a “one-size-fits-all” approach. Size, location, culture and specialties can all impact a firm's inclusion policy. Diversity initiatives must be grounded in a deep understanding of your firm's values and its brand. As you assess existing diversity initiatives, consider whether these initiatives are aligned to your firm's goals and broader marketplace forces. Finally, consider how your firm can leverage external networks and partnerships, such as CEO Action for Diversity & Inclusion or an experienced legal recruiter, to support existing initiatives and develop new ones.

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Remember that creating an initiative is just the first step. After your firm has assessed what diversity means internally, the real challenge is embracing ongoing improvement with an eye towards fostering true inclusion.