

Real Talk: The Taboos of DEI

Diversity matters. These two words outline a powerful truth and are often used in the introductory paragraph of a law firm's diversity statement declaring the firm's commitment to improving representation within its own ranks, the overall legal industry and the business community at large. But even after decades of gently and patiently exploring the issue of equity, most law firms have failed to achieve any appreciable progress; many still struggle to adopt/implement basic diversity, equity and inclusion (DEI) best practices; and law firm management seems genuinely bewildered by their inability to effect change within the organizations they claim to lead.

With that stagnation in mind, and in light of the tensions between underrepresented groups and those currently in power, many DEI professionals and allies believe the time for diplomatic discourse has passed. Instead, they feel that it may be time for the very industry committed to helping clients face hard truths and adjust to changed realities do the same for itself.

If your firm has, officially or unofficially, a DEI specialist, there's a good chance they have tried to discuss these four taboo obstacles that hinder all law firm DEI efforts: the need to embrace discomfort, mandatory introspection of firm management, recommendation of a cross-departmental leadership structure and elimination of any performative gestures with little to no connection to the firm's authentic brand, culture and purpose. This article is designed to support their suggestions with additional context and industry research.

RECOMMENDED READING

- [The National Association for Law Placement's Report on Diversity in U.S. Law Firms](#)
- [Law Firm Associate Diversity Deepened In 2022 as Partners Saw Slower Change](#)

Get comfortable with discomfort

One of the hallmarks of an effective DEI program is that at some point, whether during the initial planning exercises or at an actual educational event, everyone involved will experience discomfort. This could be the result of having a sudden realization of one's own contribution (intentional or not) to inequity or a visceral understanding of just how much extra energy minority colleagues expend to simply navigate the hallways of the firm.

It is essential that firm management, as well as those responsible for DEI initiatives, be open and willing to navigate through this discomfort, appreciating that, while everyone wants to opt out of these uncomfortable moments, only certain groups can actually do so. This way, leadership can gain a firsthand appreciation for how minority groups are disproportionately affected by societal inequities and become more sensitive to the presence of those inequities within the firm.



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By demonstrating fearlessness in addressing their own blind spots before beginning work on firmwide challenges, leadership's stated commitment to DEI is more likely to be seen as real and deserving of respect. And when others in the firm exhibit that same sort of discomfort, leadership can offer empathy without enabling bad, weak or avoidant behavior.

RECOMMENDED VIEWING

- [The Uncomfortable Conversations We Need to Have At Work – Bloomberg](#)

RECOMMENDED READING

- [If Your D&I Initiative Is Making You Uncomfortable, It's Working – Softway](#)

Partners in progress

Yes, truly successful DEI programs require firm management's highly vocal and visible support, modeling the commitment they expect to see from every department in the firm. With leadership fully opted in and open to the inevitable discomfort, it is crucial that operational management of the DEI program be handled collaboratively as well.

Too often, DEI responsibilities are farmed out to the heads of human resources, business development or recruiting, so programming skews to accomplishing goals important to those departments. **A successful DEI program thrives by using a multidisciplinary approach** comprised of human resources, business development, and recruiting leads - each with significant understanding of priorities in the other two areas.

By holistically addressing diversity concerns and inclusivity solutions, the firm creates an ecosystem that cultivates a positive internal culture, offering meaningful work to the top talent that wants to serve clients across practices, departments, locations, etc.

Note: Money talks. If the firmwide DEI programming budget is less than a first-year associate's salary, your firm's actual [commitment to change](#) is questionable. Remember: Your recruiting team needs to engage with additional schools, your business development team needs to encourage strategic sponsorships throughout the legal and business community, and your human resources team needs to ensure regulatory compliance and equal access to benefits, work assignments and other opportunities throughout the firm. DEI should be a regular component of all these discussions.

RECOMMENDED READING

- [Diversity, Equality, Inclusion: Without Leadership Buy-In, Law Firm DEI Efforts Stand to Fail – USLAW Magazine](#)
- [Effective Firm Leadership: Walk the Talk on Diversity, Equity and Inclusion – For the Defense](#)

Make it meaningful

Applying the DEI lens to all law firm operations – from recruiting lawyers to internal

holiday celebrations, community service to industry sponsorship – naturally imbues firm efforts with an authentic connection to the humans who are served by the humans at the firm. However, it is still critical to avoid performative gestures with said industry sponsorships, community events, social media posts, etc.

First, it is imperative to avoid saddling underrepresented groups with the chore of educating about or advocating for their entire group/culture. These same people are often required to put forth a tremendous amount of daily effort just to be seen and heard in a professional setting, which is exhausting. To foster true inclusivity, majority members should self-educate enough to ask intelligent questions of affinity group members, so that, collaboratively, an effective program can be developed.

Keep in mind: while no minority member or affinity group is responsible for the education of others, there is no harm in asking for a review of activities planned to observe or celebrate important holidays. Be open to input and adjust as advised to avoid cultural missteps.

Second, develop an annual calendar of holidays that are significant to your clients, colleagues, and the community your firm already supports. (Surveys are great; personal conversations are even better!) Use those important dates, including awareness months, as a way to elevate the professional expertise and personal excellence of individual clients and colleagues.

NOTE: If you are an unfortunate firm with zero internal diversity, share the mic. Use your social platforms to elevate the mission and/or success of appropriate clients or community organizations. If you're particularly brave, draft a candid article about missing the mark on DEI, what the plan for change is and how the larger community could help you be better.

RECOMMENDED READING

- [Delivering Authenticity in Your Diversity, Equity and Inclusion Messaging – Forum One](#)
- [Genuine v. Performative: How to Be Sure Your DEI Efforts Are Authentic – The Diversity Movement](#)

Beware the Caucasian congratulations

As the DEI dialogue continues, it is important for white leaders to be particularly mindful of a dangerous phenomenon known as "Caucasian congratulations." This trend involves celebrating small strides as if perfect equality has been achieved and there is no more work to be done. Phrases such as "we have to start somewhere" or "let's appreciate the smallest movement forward" often form part of this pat-on-the-back mentality – and only serve to perpetuate systemic inequity. Situational examples include:

- One woman (usually white) is appointed to the management committee of a firm but more women are not considered because "we have one."
- A South Asian associate is hired, but his/her practice manager, having never worked with a person of color, is not required to take an unconscious bias class or receive external mentoring to ensure potential microaggressions are preemptively addressed.

- The firm hosts a "how to be an effective LGBTQAI+ ally" lunch and learn, but no one in firm management or at the partnership level attends; later, someone is heard saying there was "no need to attend because everyone knows I don't have a problem with the gay community."
- A Black partner (usually female) is asked to lead the firm's diversity initiative but is given no alternative billing credit for the work involved, nor is a budget allotted or success metrics identified. Not only is the attorney denied any real power or reward, and thus is essentially set up for failure, but there is also no real way to measure success.

Closure

It is true that the DEI conversation has been ongoing for decades, and law firms have been able to get by with lackluster commitment. But this is a new day, complete with new ideologies, upgraded technology, shifts in demographic power, changed expectations about quality of life, etc. Real change must occur if existing firms are going to maintain their relevance with this new generation of lawyers and corporate clients who choose to support cultures that genuinely value inclusion over exclusionary practices.

In a post-pandemic world, law firms that hope to exist beyond their current partnership rosters would do well to adjust and evolve. *Quickly*. Because DEI is more than just a statement – it's an action. And the time for action is now.

RECOMMENDED READING

- [Law Firm Diversity: Five Reasons for the Slow Progress](#)
- [Law Schools Are Where Diversity Is Making Strides](#)

(This article was also published on [Law360.com](#) on March 16, 2023)