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Don't Let Your Bright Stars Fade: Strategies for Building a Diverse Legal Department

Diversity and Inclusion

Employment and Labor





CHEAT SHEET

- **What does lawyer diversity look like?** Lawyers self-identify in a number of discrete categories: by gender, race, ethnic background, sexual orientation, gender identity/expression, disability and socio-economic status.
- **Recruiting basics.** When searching for a new in-house position, lawyers who self-identify with one or more diversity categories generally pay particular attention to company culture.
- **Retention.** Not surprisingly, a culture that embraces diversity (or alternatively, one that is indifferent or hostile) is also one of the principal reasons that lawyers will use in their decision to leave or stay.
- **Measuring your diversity recruiting efforts.** The success of your diversity-recruiting program will take the involvement of all stakeholders to craft a program with achievable goals and appropriate accountability for the program's benchmarks.

“Diversity.” “Inclusion.” “Walking the walk.” “Building an inclusive culture where everyone can thrive.” These are buzzwords and catchphrases that dominate any discussion about building a modern, sustainable and desirable in-house legal department on today’s global stage. In fact, much of the discussion about contemporary diversity and inclusion objectives is no longer focused on whether a diverse workforce is desirable, but rather on the benefits derived from diversity and the metrics that can be applied to validate the positive impact that recruiting for diversity can achieve. Diversity drives growth. It opens the door to new revenue opportunities. Perhaps most importantly, a diverse workforce produces better decision-making, challenges the status quo and achieves the best possible outcomes for the organization.

“Does Diversity Pay?: Race, Gender, and the Business Case for Diversity,” *American Sociological Review*, Vol. 74, April 2009, pp. 208–224.

So what exactly is diversity? [The Society for Human Resource Management in the United States](#) sums it up as “... the acceptance of minorities by embracing cultural differences within the workplace.” The international business community has embraced a similar, if slightly broader definition of diversity in the context of organizational management, as described by the *Financial Times*: “[d]iversity management goes far beyond simply hiring demographically diverse employees. It encompasses everything a company does that signals its genuine attitude toward employees’ diverse perspectives and backgrounds.” The General Electric Company [defines diversity as](#) “employees [who] reflect both the local communities we serve and the people with whom we do business. We see diversity and inclusiveness as an essential part of our productivity, creativity, innovation and competitive advantage.” Leading global law firm Sidley Austin, LLP embraces a variation on that same theme, stating that for them, diversity is a “...mission to continually attract, retain and promote to partnership and leadership outstanding lawyers who reflect the global marketplace and the communities that we serve.” And the US Supreme Court even weighed in a few years ago in a landmark law school affirmative action case, noting that building a successful business in “today’s increasingly global marketplace” necessarily requires a workforce “exposed to widely diverse people, cultures, ideas and viewpoints.”

Grutter v. Bollinger, 539 U.S. 306 (2003).

What is the common theme? A monolithic workforce that looks like the cast of a 1960’s TV sitcom won’t drive growth, profitability or shareholder value in the 21st century. Today, the diversity mandate is not necessarily being advocated by managers from the inside, but rather it has become a business imperative increasingly dictated by the diverse customers of every modern enterprise. So how does the diversity mandate translate for lawyers looking to position their legal departments as not only defenders of the legal faith, but also as good business partners in the quest for profitability? It’s all about finding, hiring and retaining the best, brightest and most diverse lawyers you can find.

The state of the profession in 2014: What does lawyer diversity look like?

Diverse lawyers self-identify in a number of discrete categories: by gender, race, ethnic background, sexual orientation, gender identity/expression, disability and even by socio-economic status. And some of the latest numbers reflect what we already knew — the profession is changing, though not as rapidly as many would like when compared to US Census data.

In addition, according to the American Bar Association’s (ABA’s) Commission on Mental and

Physical Disability Law's 2011 Disability Statistics Report, approximately 6.9 percent of the ABA's members self-identify as having a disability. As diversity recruiting goes, it's also important to remember that lawyers may self-identify in more than one of these demographic categories simultaneously.

Reliable data on where diverse lawyers make their careers is harder to come by. Yet it's easy to find anecdotal long-term evidence of better environments for diverse lawyers in nonprofits, government and non-traditional practice environments, while law firms have historically had a difficult time building sustainable diversity recruitment and retention programs. In-house legal departments, however, may be uniquely positioned to make diversity stick given the more visible and longer-standing role their employer-clients have played in advancing diversity initiatives for the benefit of their stakeholders.

So what do these statistics mean? Well, first and foremost, they reveal that our profession does not reflect the diversity of modern American society. More importantly, these numbers reveal a legal profession that must take significant steps to increase the diversity of its membership if, as so many leading organizations correctly state, our legal departments are to "reflect both the communities we serve and the people with whom we do business." Diversity recruitment efforts need to be about more than just "checking a box."

Recruiting basics: Getting diverse lawyers in the door

Diverse lawyers are motivated by the same things as any other lawyer. Major motivators include interesting and challenging work, an equal opportunity to succeed, and organizational visibility with recognition for a job well done, including equitable compensation. But when searching for a new in-house position, lawyers who self-identify with one or more diversity categories generally pay particular attention to one more critical category of corporate existence: culture. They want to know what it will mean to be a diverse employee at your company and in your legal department. More importantly, they want to know how other diverse lawyers have fared, or are faring, in your company's culture. In public relations parlance, they want to know whether you truly "walk the walk" on diversity, rather than just "check the box."

Structuring a diversity recruitment program begins with a long-term assessment of your department's needs relative to your present legal staff and the demands that your organization will likely place on the legal department over the assessment time horizon. Much like GE's famous annual "Session C" process for evaluating organizational talent, you will want to understand who your future lawyers are going to be — if not in name, then certainly in terms of expertise, skillset and experience. By making increased lawyer diversity a long-term goal, you can't simply focus your recruiting efforts on the tried-and-true hiring methods that our profession has often relied on in the past. Why? Because diverse lawyers are not likely to be represented by those methods in any greater numbers than the ABA diversity group statistics suggest. In addition, you should consider whether you want to restrict your recruitment efforts of self-identified diverse lawyers to online talent management websites or affinity group job boards because that approach is unnecessarily limiting in scope.

The better way to connect with diverse lawyers is to simply go where they are. In other words, cast the widest possible net and recruit the best and the brightest by being active and visible in their world. When you need to reach out, your credibility as an employer of choice will already be well established. For you and your legal teams, diversity will be more than just a feel-good exercise.

So where do you go to make that connection? The most obvious answer is to the various communities — both virtual and brick-and-mortar — that attract diverse legal talent. Organizations like

the [Minority Corporate Counsel Association](#), the [Leadership Counsel on Legal Diversity](#), the [Institute for Inclusion in the Legal Profession](#), [Corporate Counsel Women of Color](#) and the [Hispanic National Bar Association](#) all offer diverse lawyers an opportunity to connect with each other, as well as with people and organizations beyond their own employer who are looking to make a genuine connection. And ACC has partnered with [Street Law](#) to offer a Corporate Legal Department Pipeline Program to diverse high school students who have already demonstrated an interest in becoming lawyers.

Of course, there are scores of organizations and affinity groups that bring diverse lawyers together, and as an employer seeking to make diversity a key part of your legal department's recruiting strategy, you will need more than just a token membership in one or more of these groups. In fact, you need to make a genuine commitment to the group's mission and dedicate yourself — and your legal team — to getting involved with the membership on their terms. Pick a group or two and really dive in. Show them who you are and how you can help them achieve their goals. Do more than you are asked. Host one of their events on a regular basis and get your colleagues in company leadership involved. Make your connection personal, deep and lasting. Building credibility takes time, but the benefits will be apparent when you start a search for your next lawyer.

	Lawyers	US POpulation
Women	30.0%	51%
Blacks	4.8%	13%
Hispanics	3.7%	16.9%
Whites	88.1%	63%
LGBTs*	2.1%	3.5%

[American Bar Association lawyer demographics](#)

<http://quickfacts.census.gov/qfd/states/00000.html>.

* This is an approximate average of law student, associate and partner statistics collected by the National Association of Law Placement; see Judith Collins, "NALP Research: LGBT Representation Up in 2012," NALP Bulletin, January 2013.

Recruiting for diversity also means that you need to think bigger and more broadly than a singular commitment to one of the organizations listed above. Some of the best diversity recruiting for lawyers is done in an indirect fashion. What do we mean by indirect?

In order to attract the best and brightest, you need to have credibility across the spectrum of diverse legal communities. But many diverse lawyers are involved in organizations that aren't inherently "legal" in nature. Yet, if you want to build credibility as a diversity employer of choice, you need to seek out and get involved with non-traditional groups too. A recent example involves an organization that wanted to recruit lawyers with deep connections to the African American legal community. Rather than simply seek out black lawyers or join the MCCA, that company developed a strong and lasting relationship with the National Urban League. The company underwrote and promoted employment fairs, developed community-based job training and mentoring programs in cooperation with company leadership around the country, and their management team made a personal, senior-level commitment to further the Urban League's mission. As a result, the organization has attracted not just African American lawyers, but also diverse employees from all walks of life.

We also want to note the importance of an organization's commitment to pro bono work in recruiting diverse employees (including lawyers, of course), particularly millennials*. A 2012 study by the [Committee Encouraging Corporate Philanthropy](#) noted that 50 percent of surveyed US companies were offering pro bono opportunities to their employees. It's not unreasonable to expect that a strong

organizational commitment to pro bono service will be even more valuable to the diverse legal talent that will staff your legal department in the future. If you need help evaluating pro bono opportunities or chartering a pro bono mission statement for your legal department, check out [Corporate Pro Bono](#), a joint project of the Association for Corporate Counsel and the Pro Bono Institute.

* [“Millennials, more than any other generation, want to make a difference, feel like they have something to do, and want really substantive opportunity.”](#)

Retaining diverse lawyers: Now that you have them, how do you keep them?

Here's a not-very-surprising secret: Hiring is the easy part! Building a diversity recruitment program, finding diverse lawyers and getting them in the door are only the first steps. The real challenge for most organizations is retaining those lawyers for the long haul.

The tangible aspects of a successful recruiting program are easy to define: Base salary, incentive compensation, equity grants and perquisites are among them. Many of these items will be determined by the company's HR policies. And typically, you will have limited opportunity to use those tangible benefits to differentiate your company from those competing to hire the same lawyers. The fact is that all else being equal, market forces generally dictate compensation and related matters. Diverse lawyers weighing in-house opportunities typically make career decisions based on less tangible factors.

Having the right corporate culture is one of the keys to building and selling a successful diversity-focused legal recruiting program. Not surprisingly, a culture that embraces diverse lawyers (or alternatively, one that is indifferent or hostile) is also one of the principal reasons that lawyers will decide whether or not to build a career at your company. Of course, culture is often comprised more of intangibles, rather than elements that can be measured. But it's something that most employees should be able to define when asked. A large retailer recently had an unnerving revelation while conducting a corporate culture survey of current employees. The company was surprised to find that almost every employee they interviewed described the company's culture differently. In fact, because the company had evolved without any overarching theme to define the cultural experience for its employees, those interviewed felt somewhat estranged from their employer. Diversity recruiting was nearly nonexistent. And the metrics on employee satisfaction, engagement and turnover were all significantly subpar. The lesson: Get your culture right, align your recruiting and retention efforts with it, and then make sure everyone inside the organization can articulate it.

What specifically should your company's culture embrace to be effective in retaining diverse lawyers? What kinds of intangibles do diverse lawyers want in order to make a long-term commitment to your company?

- **Tone at the top.** It's part of almost every company's mission statement these days — either expressly or implicitly — but when it comes to employee retention and commitment to diversity, what the company's top leadership says and does will be watched closely by the diverse lawyers you have worked so hard to bring on to your team. Nothing will do more to undermine your diversity recruitment and retention efforts than when the CEO doesn't get it. Make sure company leadership is committed to a culture that embraces employee diversity and that company leadership can communicate that commitment in a genuine and authentic fashion.
- **Communication.** It's a stereotype that lawyers love to talk. While there are those among us

who may shy away from public speaking, there is no disputing the fact that we are trained communicators. In order to effectively demonstrate your commitment to retaining and promoting diverse lawyers, you've got to be willing to effectively promote that commitment in word and deed. Get comfortable talking about diversity. Make it clear where you stand and, above all, be ready to articulate why diversity is critical to your team's success.

- **Equal access.** Diverse lawyers want a commitment from the company that they have the same opportunity to take on challenging legal work, develop new skills and engage with senior management in the same manner as other members of the legal department. They want to know that they are not just there to meet some hiring requirement but that the company and its leadership are genuinely committed to their development as lawyers.
- **A seat at the table.** Diverse attorneys need to know that their presence is not just accepted, but also warmly embraced. They want an opportunity to have their voices heard and be included in the legal department's decision-making process. Even today, it's still important to let everyone know that they are there for their ability to contribute, and not just as window dressing.
- **Respect.** Not just from management, but also from their peers. While it's true that respect must be earned, it is also true that diverse lawyers don't want to be patronized for their contributions. And it will be incumbent upon legal department leaders and others in company management to foster an inclusive, respectful atmosphere that values every lawyer's role within the company.
- **A fair shot.** The call for a level playing field resonates with anyone trained as a lawyer. And that's precisely what diverse lawyers seek in an in-house position. It may seem like a redundant talking point in the context of law department diversity, but make sure that your entire team understands that they each have an impartial and unbiased chance to succeed. And most importantly, let your lawyers know that if they get unjustified pushback from within the organization, you have their backs.
- **Opportunity to advance.** Taking the long view means that your commitment to diversity in the legal department will ultimately be measured by, among other things, the number of those lawyers who rise through the ranks to take on more senior roles in the organization. The diverse lawyers you recruit need to know that they have a path to advancement that is achievable. Give them stretch assignments, management responsibility and exposure to company leadership. Then make sure they have the support needed to succeed. Use your company's annual talent management process to ensure that all of your lawyers understand what a realistic career track looks like.

Measuring the success of your diversity recruiting efforts

We live in a world dominated by data. And, as any in-house lawyer can attest, we have long since reached the point where the effect of almost any process or the impact of any decision can be measured to the fourth decimal. The success of your diversity recruiting program is no different and it will take the involvement of all stakeholders — company leaders, managers, internal clients and legal department members — to craft a program with achievable goals and appropriate accountability for the program's benchmarks.

To maximize the impact of your diversity recruiting initiative, consider the following:

1. Establish the program's goals and priorities from the outset. What is your ultimate goal? Is it achievable in a five-year timeframe? Ten years? Be specific in defining exactly where you are going and how you expect to get there. Set forth the metrics that will be used to evaluate the program's success and make sure that everyone involved understands how that data will be

collected and used.

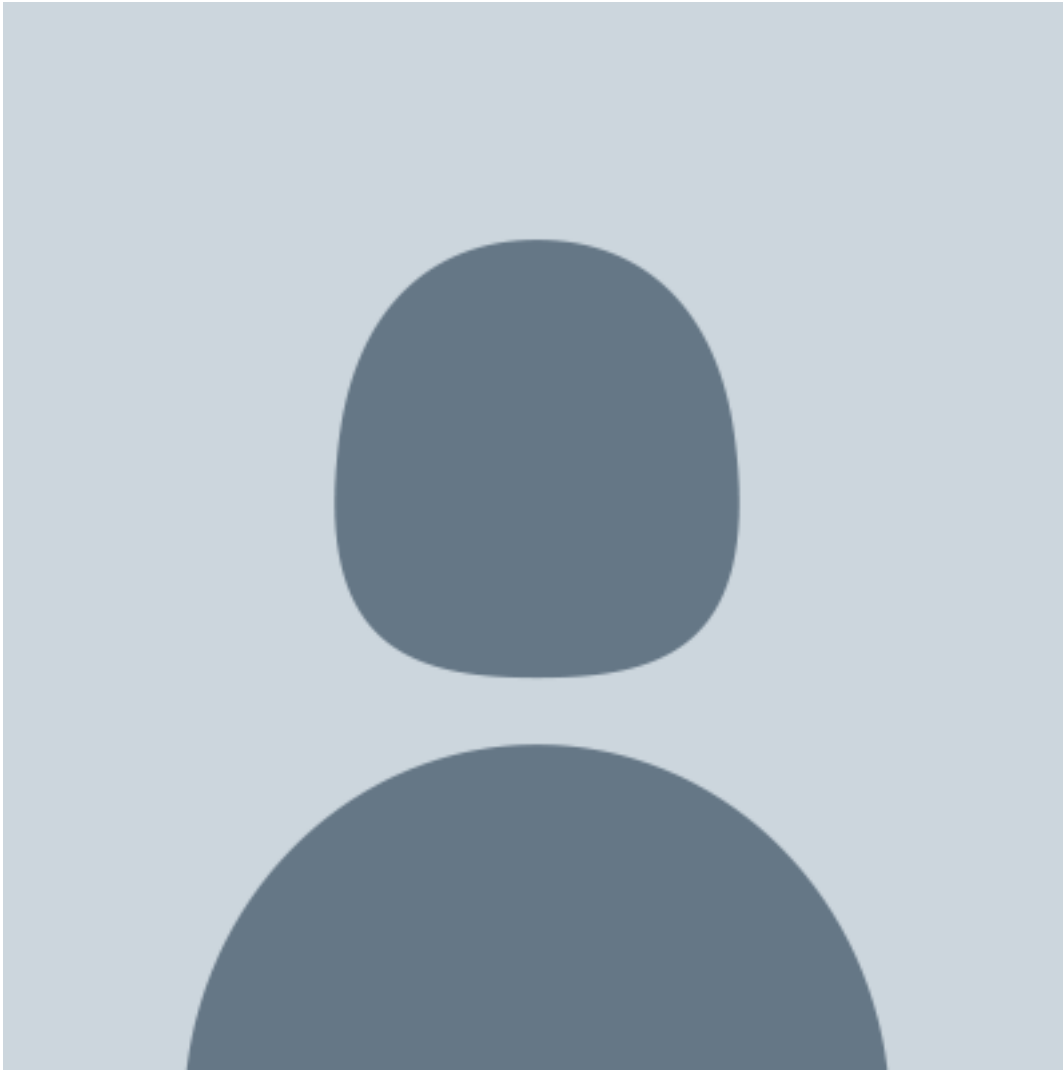
2. Measure, report, recalibrate, repeat. Once you fix the goals and timeframes for reaching them, build in periodic benchmarks along the program timeline. Don't just collect data, but rather, use that data and those interim benchmarks to evaluate the effectiveness of your diversity initiatives and periodically reset the timeline (and everyone's expectations) if necessary. Revisit your goals too. Challenge your assumptions. Are they still reasonable? Achievable? If not, restate them and make sure all of the program's stakeholders understand the changes and why they are being made.
3. Incentivize legal department managers to embrace the program's goals and do the right thing. Give department managers specific, measurable goals and define the rewards for achieving them. Hold them accountable. And remember that while compensation may be the most common tool for incentivizing behavior, a lawyer's commitment to support an effective diversity program as one of the company's core mission objectives shouldn't be negotiable.
4. Communicate, communicate, communicate. It may be a cliché these days, but transparency is key. Your diversity recruiting program will enjoy real credibility if you regularly communicate your progress and the program's impacts to the legal department and to company leadership. Publish the results of your periodic program reviews and discuss them regularly with the stakeholders.
5. Make legal recruiters your diversity allies too. Like everything else in our fast-paced working lives, hiring in the legal department can too often become an exercise in filling the empty seat as quickly as possible. Building a diverse slate of candidates can take time. Resist the temptation to rush into hiring anyone until your legal recruiting partners have presented a sufficiently diverse slate of qualified candidates to consider.
6. Connect with your peers. The ACC community provides a ready-made platform to engage with your colleagues in other in-house legal departments who are working on recruiting and retaining diverse lawyers too. Share your ideas, your experiences and your challenges. Don't be afraid to ask for help. Remember that a successful commitment to legal department diversity ultimately benefits every one of us in the profession.

Conclusion

Making legal department diversity a reality in your company won't be a short-term project. The sobering numbers on diversity in the legal profession make that fact all too clear. But there are signs of progress. For example, in percentage terms, [as of 2013](#), women led more Fortune 500 legal departments (21 percent) than served as partners in the 200 largest US law firms (17 percent). Yet those numbers do reflect improvement from 2009. Vast sectors of the global business community long ago adopted the goal of increasing diversity representation among the ranks of its members as a measure of corporate responsibility. And there may be increasing evidence that the in-house legal community is leading the way on making the diversity of our profession a moral and business priority too. In our experience, the more our legal departments look like, think like and share experiences with the clients we serve, the better our business counsel and legal advice will be. After all, isn't that why in-house counsel exist?

According to the National Association of Women Lawyers and Corporate Counsel, 16 percent of law firm partners were women in 2009, vs. 17 percent of Fortune 500 legal department leaders in that same year.

[K. Steven Blake](#)

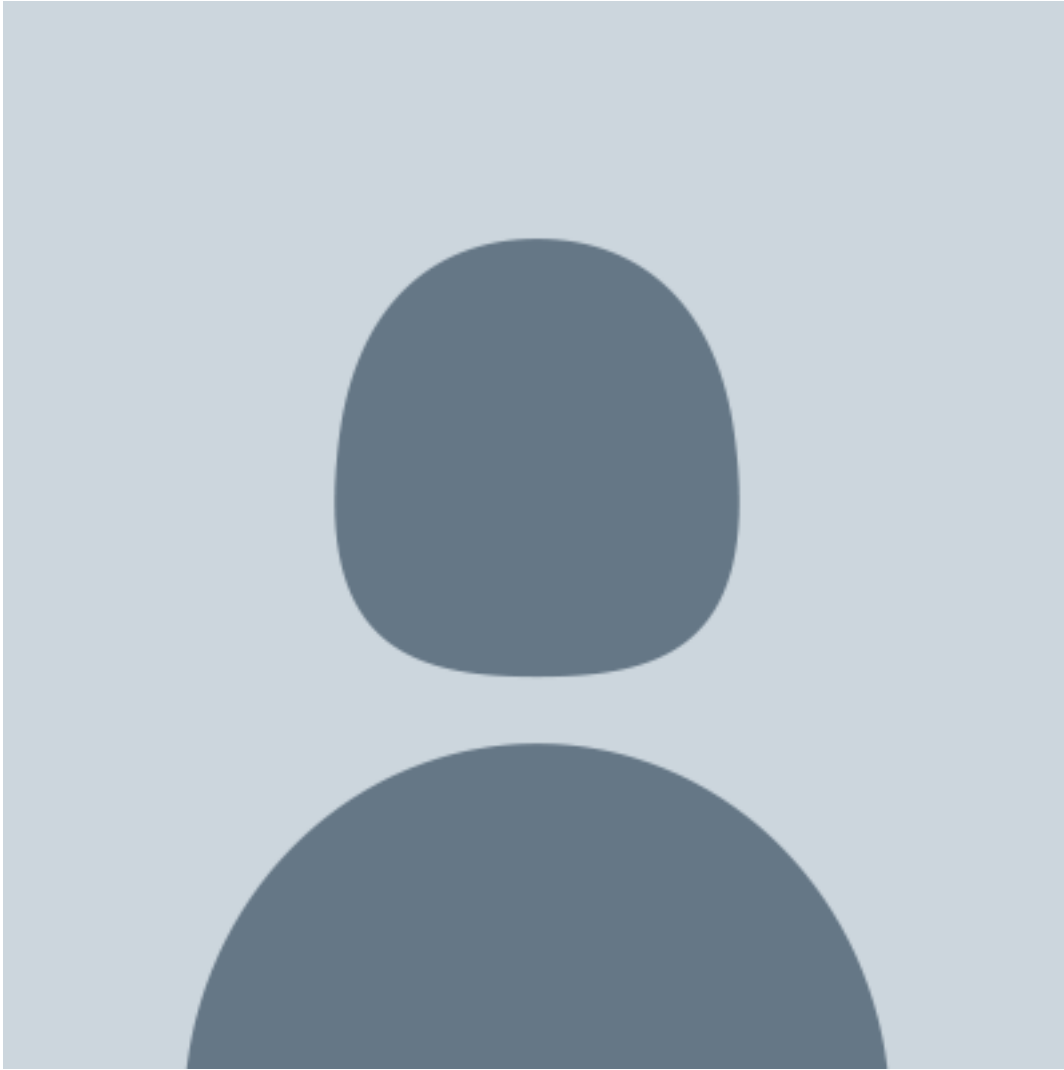


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