



**BALANCING DIVERSITY AND INCLUSION INITIATIVES
IN AN ERA WHERE WORK FROM HOME/HYBRID IS THE NORM**

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Session Title: The New Normal – Balancing Diversity and Inclusion Initiatives with Remote/Hybrid Work Policies

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I. INTRODUCTION

Corporate diversity, equity, and inclusion (“DE&I”) initiatives serve the important function of ensuring the diversification of the entity’s workforce and leveraging that diversity to meet the entity’s business goals. Achieving these initiatives requires a company-wide commitment to taking concrete steps to measurably increase diversity while supporting a culture of inclusion. At the same time, the COVID-19 pandemic has forced many employers to reevaluate their office footprints. Our panel presentation will discuss the ways in which a corporate entity can maintain a culture that supports and promotes diversity and inclusion while balancing the realities of a need for remote/hybrid work environment over the next few years.

II. THE “NEW” NORMAL

Few would have thought that we would be still be talking about working from home nearly two years after much of the world began to confront the coronavirus pandemic in early March 2020. Today, the concept of remote/hybrid work is still commonplace globally. And at the peak of the pandemic, more than 70% of United States workers worked from home most or all of the time. See https://www.pewresearch.org/social-trends/2020/12/09/how-the-coronavirus-outbreak-has-and-hasnt-changed-the-way-americans-work/psdt_12-09-20_covid-work-00-0/. It has long been observed that crises, particularly economic ones, have had a disproportionate impact on DE&I. Research has confirmed that diverse employees are struggling the most during COVID-19. See <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diverse-employees-are-struggling-the-most-during-covid-19-heres-how-companies-can-respond>.

As law firms and corporations have had to abruptly develop remote/hybrid workplace policies, DE&I initiatives have required a renewed and intentional focus to avoid creating workplace environments that send employees running for the exits. To be clear, the development of these work from home policies and initiatives can, and should, provide law firms and corporations with a fresh framework for the development of inclusive practices and more effective leadership skills in ways that did not exist before the pandemic. Because remote workplace environments may become permanent for more and more of the work force, there are a few concepts that all employers should be mindful of as they continue to develop and revise their policies. This paper and the presentation will focus on several important, but certainly not exclusive, concepts and they are: clarity, flexibility, equity, and intentionality.

III. CLARITY IS ESSENTIAL FOR ALL WELL-CRAFTED DE&I POLICIES

Having a well-crafted DE&I policy is more important than ever in recruiting talent and how that policy is communicated internally and externally has shifted to primarily online content. A 2019 global diversity survey by the Boston Consulting Group, revealed a striking perception gap between women, racially or ethnically diverse employees people of the LGBTQI+ community, and their employers. One of the most significant consequences of this perception gap revealed a failure for policies that were needed to be implemented by leadership.

One of the first places to address and avoid this perception problem is at employee recruitment. Recruiters and managers should be fully familiar with all diversity and inclusion policies and incorporate it into their work practices (including referencing it in job descriptions posted for open positions). To do that, what diversity and inclusion means for your law firm or company should be clearly defined and widely communicated throughout. Because of the pandemic, employee recruitment is nearly all virtual. Therefore, your diversity and inclusion

policies should be prominent and accessible on career websites. A thorough review of your policies should be done during the onboarding of ALL employees, not just your diverse hires.. Enforcement of DE&I policies must be uniform and consistent. The expectation for and implementation of DE&I and progress should be clear to all employees. Finally, the measurement of success should be clearly defined and communicated to everyone as well because accountability is a key to successful implementation of DE&I policies in an environment where your employees are dispersed during the pandemic.

IV. DIVERSITY AND INCLUSION POLICIES MUST BE INTENTIONAL

For DE&I policies to be successful they must be a forethought and not an afterthought, or, in other words, they must be intentional and a part of all aspects of your law firm or company. You should ensure that:

- DE&I is an unequivocal commitment throughout the organization
- Your organization has at least one group focused solely on the implementation and success of DE&I policies and initiatives (can and should include representation from leadership within the organization)
- Know what your employees want (surveys, resource groups, and focus groups)
- Know what obstacles exist or will prevent achievement of your DE&I goals
- Provide resources and support for the successful implementation of DE&I goals (support virtual meetings and use technology to promote inclusion)
- Support those non-diverse colleagues that advocate for and provide allyship to diverse members of your organization
- Review and revise job descriptions and performance review processes with inclusive language

- Host events with diverse speakers and panelists (easier now in more virtual environments)

V. DE&I POLICIES REQUIRE FLEXIBILITY

Successful DE&I policies have always been evolving and need to be flexible to meet the needs of employees, particularly during the pandemic. Flexibility in work location and schedule opens opportunities to a wider pool of individuals. If employees are no longer being required to go into the office, law firms and companies can hire people located anywhere in the world. However, working from home may also make individuals that are already marginalized become even less connected and/or visible to their coworkers. Like many things, the pandemic has highlighted the fact that a one size fits all approach may not work for DE&I initiatives. For example, companies with large numbers of employees working in the field have particularly struggled with tension between employees working out in the field and those working in the office or at home. This tension has been created because there is this sense of unfairness that office personnel are being allowed to work from home when the employees working in the field do not have the same ability to do their job from home. The problem with this disparity is amplified by the fact that for many companies, the demographics of the workers in the field tend to have a higher percentage of minorities than those that work primarily in the office. True workplace flexibility should provide every employee with the opportunity to work fairly and equitably, whether they are on-site, in the office, or working at home. See <https://www.ceridian.com/ca/resources/talent-management-strategies-pulse-of-talent-report>.

VI. DIVERSITY AND INCLUSION POLICIES REQUIRE CONTINUED FOCUS ON EQUITY

Equity is “the fair treatment, access, opportunity, and advancement for all people, while at the same time striving to identify and eliminate barriers that have prevented the full participation of some groups.” See <https://www.ywboston.org/2019/03/beyond-the-acronym-dei/>. In order to ensure equality for all, equity requires that law firms and companies recognize the barriers and advantages that their employees endure. One of the areas that has long demonstrated inequity in an organization is its compensation policies, particular in terms of gender disparities. The American Bar Association reported that, in 2016, female attorneys earned \$1,619 per week on average, whereas male attorneys earned \$2,086, or in other words, female attorneys earned \$24,284 less per year than their male counterparts.

The pandemic has also impacted gender disparities in other ways. Studies showed that women were disproportionately impacted by the closure of schools and day care facilities, which forced kids to stay home. Prior to the pandemic, in families where both parents worked full time, the average mom did almost 60% of the childcare. See Covid Economics 4, 14 April 2020: 62-85. The pandemic has increased this burden by making it harder for families to outsource caregiving to schools and day care facilities.

Despite the fear that the pandemic could exacerbate already severe inequities in the workplace, there are things that employers can be doing to address concerns:

- Conduct rigorous and regular pay-equity reviews
- Where disparities are identified, adjust the compensation and/or work place policies
- Eliminate subconscious bias that rewards men/punish women for performing the same roles

- Review policies and procedures for employee review and promotion considerations that disproportionately rewards those that come to the office versus those that work from home
- Require unconscious bias training for managers, with emphasis on objective criteria for promotion/raises, and maintaining/reviewing/questioning data regarding pay equity in categories of gender, sexual orientation, race/ethnicity, disability, etc.

VII. CONCLUSION

In many ways, so many aspects of the work from home/hybrid work policies that came about as necessities as a result of the pandemic are here to stay. As has been the case during so many crises that we have faced before, however, DE&I initiatives, if left unchecked, are likely to fail if law firms and companies do not take action in the face of our new normal. Employers need to be mindful of this risk. DE&I initiatives must be clear, flexible, and intentional in order to achieve the equitable results that are at the heart of these policies.