

3 Ways Law Firms Can Guard Diversity Gains During Crisis

By **Debra Pickett** (August 13, 2020, 4:48 PM EDT)

For many years now, law leaders have sought to improve diversity and inclusion at their firms, both out of genuine commitment to the cause of equity and because they understand that client demand for diverse teams impacts the bottom line.

So far, these predominantly white and male leaders have focused on individual actions, such as offering various kinds of diversity training to attorneys, fostering formal and informal mentoring programs, and providing financial support and time to women's initiatives and other cohorts that meet to network and host panels.



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There are two problems with programs like these, well-intentioned though they may be. The first and most important is that they are not effective.

That statement is not a matter of interpretation; an annual survey by the National Association of Women Lawyers reports that in 2019, women comprised only 20% of equity partners.[1] And that is only 3.5% higher than the 2006 figure. National Association for Law Placement data shows that only 6.6% of equity partners are nonwhite men and women.[2] Despite the years of money and time law firms have invested in diversity initiatives, the leadership class still does not come close to mirroring the makeup of our society.

The second problem with interventions limited to individual actions is that they often burden the very people whose careers are held back by racism and sexism with the responsibility for making change inside the organization. These attorneys must lean in, conform in dress and speech to dominant — though arbitrary — standards, and educate their majority-group colleagues about the existence and impact of bias by serving on countless conference panels.

To add insult to injury, this labor — very important to the economic health of the firm given the importance of diversity and inclusion to corporate clients — is often not valued when it comes time for bonuses and promotions.

And now firms face the economic cataclysm unleashed by the coronavirus pandemic. Any tenuous progress made in recruiting and retaining more women and attorneys of color is threatened by the prospect of layoffs and cuts to diversity and inclusion budgets. In this climate, what can managing partners do to guard small but hard-won gains and truly foster equity in their firms?

The answer lies in moving beyond individual actions to embrace comprehensive, firmwide policies that recognize not just who is harmed by bias, but also who benefits from the status quo. Bias is a systemic problem, and eliminating it requires systemic solutions. Here are three concrete steps managing partners can take to show true leadership on equity.

1. Link requests for proposal to origination credit.

Client demand for greater diversity in outside legal teams sometimes leads to superficial actions that provide the appearance of diversity without actually distributing work more fairly. Unfortunately,

attorneys of color and female attorneys have stories about their pictures appearing in pitch decks, maybe without their even knowing, or attending pitch meetings only to be passed over for meaningful work on the matter once the firm wins the business.[3]

Bait-and-switch tactics like these are not aligned with a firm culture that values inclusion, period. And clients are getting more sophisticated in their assessment of firm metrics, tracking not just who comes to the pitch meeting but who actually does the work — and gets credit for it. Institute a clear policy: Every person included in the pitch deck or request for proposal must actually be engaged in the work and receive origination credit — no exceptions.

2. Make parental leave mandatory for male partners.

Some law firms have adopted more generous parental leave policies than ever before, and they deserve credit for this substantive reform. But in many firms, the implicit culture has not caught up with the written policy. It's still difficult for women to take the maximum leave available without paying a professional price, but it may be even harder culturally for men to make use of their leave. Studies show men who take parental leave face damage to their professional reputation and earning potential.[4]

The incentive for an individual to protect his career runs counter to the goal of equity across the firm. Managing partners can remedy this by instituting across-the-board policies.

First, make leave policies gender-neutral and drop the retrograde "primary caregiver" distinction.[5] Second, if the firm offers three months of leave to new parents, make it mandatory for both male and female attorneys to take three months, no less, and create thoughtful ramp-down and ramp-up processes that mitigate the challenges of breaking away from and returning to work.

3. Reimagine the role of chief diversity officers and give them real power.

It's time to get chief diversity officers out of the training business and into roles with substantive influence across the firm. Historically, these professionals are brought in after big decisions are made to assess the impact on firm metrics, but by then it is too late to create equitable policies that make an impact. "We'll do better next time" is the mantra, but, mysteriously, next time never comes.

Firm leaders committed to true change understand that diversity officers must enter the process earlier by participating in committees making decisions about hiring, compensation, performance review, promotion, partnership and — unfortunately necessary during this tough economic time — layoffs.

Diversity officers understand how to recognize and disrupt bias before it impacts decisions.[6] For instance, they might steer a committee to ask questions about an attorney's access to high-quality work, growth-oriented evaluations, sponsorship by more senior partners and networking opportunities before making a final decision on promotion.

If a firm is making reductions, this officer can help fellow firm leaders consider the investment the firm has made in its diverse partners and the impact laying those attorneys off might have on the leadership pipeline — and on relationships with clients who are sensitive to representation on their legal teams.

These professionals provide expertise that is crucial for firms seeking to stay relevant in today's market. It's time to give them real, rather than just symbolic, power.

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[1] <https://www.nawl.org/page/2018survey>.

[2] <https://www.nalp.org/0419research>.

[3] <https://fortune.com/2020/06/11/law-firms-black-diversity-inclusion/>.

[4] <https://spssi.onlinelibrary.wiley.com/doi/abs/10.1111/josi.12017>.

[5] <https://www.vault.com/blogs/vaults-law-blog-legal-careers-and-industry-news/whats-missing-from-the-abas-report-on-why-women-leave-law-firms>.

[6] <https://blogs.thomsonreuters.com/answeron/preserving-di-progress-during-economic-downturns/>.