



DIVERSITY & INCLUSION (D&I) TOOLKIT FOR TURBULENT TIMES

This is a stressful time for law firms. The COVID-19 pandemic has negatively affected firm revenues, many firms have their lawyers working remotely, and furloughs and layoffs of lawyers seems to have begun in earnest. It is essential that during these uncertain and turbulent times law firms do not make decisions that disproportionately and inappropriately affect women and people of color (POC), which has been the case in past economic downturns. This is even more critical given the heightened attention to antiracism and racial justice.

Research shows that when firms utilize objective criteria and processes that have been stripped as much as possibility of subjective, often unconscious bias, they make better, fairer personnel decisions. This toolkit is designed to assist law firms in implementing processes and procedures that will assure their personnel decisions during these difficult times are all free of unjustified and discriminatory consequences.

CLIENT FOCUS

Before making career affecting decisions, discuss the implications with your clients. Many corporate clients are adopting minimum diversity requirements, such as the Intel Rule¹ and the Novartis Preferred Firm Program². If your firm doesn't perform well under these standards, implement a "get healthy" plan.

A SEAT AT THE TABLE

Your firm's Chief Diversity Officer (and if you don't have one, you should hire a diversity consultant) should be at the table when major hiring, dismissal, furlough, compensation, and promotion decisions are being made. This person should be expressly charged with evaluating these decisions from a D&I perspective and given the authority to conduct careful analysis before any action is taken.

DATA, DATA, DATA

Be sure you have accurate and complete data on compensation, hours (including non-billable hours), promotion history, and origination credit (especially splits) by gender, race, and ethnicity. Periodically review this data to be sure there is no apparent pattern of bias.

EMPLOYEE WORTH

When determining which employees to furlough or let go, in addition to the usual data, take into consideration:

- **FIRM "HOUSEKEEPING."** Track the number of hours attorneys spend in firm marketing, mentoring, management/operations, administrative projects, and committees/affinity groups. Balance these hours against billable hours and client credits.
- **LEADERSHIP.** When assessing leadership performance and potential, ensure that you use criteria that are rooted in the actual performance of the teams that are being led, not traditional male leadership stereotypes.
- **CURRENT EVENTS.** Evaluate how POC may have been negatively impacted by current events. Check in with individuals to support them in ways that are meaningful.

TONE FROM THE TOP & BUY-IN AT THE MIDDLE

All successful diversity initiatives have one thing in common -- ownership by the organization's most senior leaders. Such initiatives must be actively supported and promoted by the head of the firm, practice group leaders, and the partnership as a whole.

FEEDBACK

Meaningful and timely feedback is harder to give without the possibility of "down the hall" chats. Feedback needs to be done promptly, effectively, and consistently. Evaluate partners' performance on their track record of delivering regular feedback. And, be sure everyone knows the complexities of providing feedback across differences.⁴

WORK ALLOCATION

Review current work allocations to ensure that the absence of in-person interactions during the pandemic is not disproportionately affecting women and POC.

DISPROPORTIONATE IMPACT

Seek input from your firm's diversity team as to what sort of impact proposed personnel decisions will have on traditionally underrepresented populations and working parents.³

CREATE MORE OPTIONS

Are there viable options available to avoid furloughs and layoffs? Are new work structures and practice approaches possible? This may be the perfect time to consider radical changes in law firm operations and structure -- perhaps more permanent work from home arrangements and part-time work, new technological connections and interactions, increased flexible-hours, or different lawyer categorizations. Seize the moment to better leverage technology to help build a more diverse and inclusive workforce -- a workforce that is characterized by social/racial/gender justice.



ACKNOWLEDGMENTS

The National Association of Women Lawyers would like to thank the individuals who volunteered their time and expertise to create this toolkit. Their participation was instrumental in shaping this as a practical, realistic, and highly relevant presentation of best practices -- practices that should guide our personnel decision at all times, but now more than ever.



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ABOUT NAWL

The mission of the National Association of Women Lawyers is to provide leadership, a collective voice, and essential resources to advance women in the legal profession and advocate for the equality of women under the law. Since 1899, NAWL has been empowering women in the legal profession, cultivating a diverse membership dedicated to equality, mutual support, and collective success.

END NOTES

1 "Beginning Jan. 1, 2021, Intel will not retain or use outside law firms in the U.S. that are average or below average on diversity. Firms are eligible to do legal work for Intel only if, as of that date and thereafter, they meet two diversity criteria: at least 21% of the firm's U.S. equity partners are women and at least 10% of the firm's U.S. equity partners are underrepresented minorities (which, for this purpose, we define as equity partners whose race is other than full white/Caucasian, and partners who have self-identified as LGBTQ+, disabled or as veteran)." <http://newsroom.intel.com/editorials/intel-rule-action-improve-diversity-legal-profession/>

2 "Novartis preferred firms will make specific diverse staffing commitments for each engagement (and in any event commit that not less than 30% of billable associate time and 20% of partner time will be provided by females, racially/ethnically diverse professionals, or members of the LGBTQ+ community, with an expectation that such commitments will move to parity over the next several years). If a firm does not meet its agreed-upon diverse staffing commitment for a particular matter, Novartis will withhold 15% of the total amount billed over the life of that specific matter." <https://www.novartis.com/news/novartis-preferred-firm-program-legal-services-launched>

3 According to Gallup, "married or partnered heterosexual couples in the U.S. continue to divide household chores along largely traditional lines, with the woman in the relationship shouldering primary responsibility for doing the laundry (58%), cleaning the house (51%) and preparing meals (51%)." "Women Still Handle Main Household Tasks in the U.S." Gallup.com (5 Jun. 2020) <https://news.gallup.com/poll/283979/women-handle-main-household-tasks.aspx>.

4 See e.g. Runyon, Natalie and Jenrette-Thomas, Ann. "9 Steps on Giving Constructive Feedback Across Differences." Thomson Reuters Legal Insights Europe (2020) <http://www.lexexecutiveinstitute.com/wp-content/uploads/2020/02/9-Steps-on-Giving-Constructive-Feedback-Across-Differences.pdf>