Going "All In" on Diversity and Inclusiveness

By Kathleen Nalty, Esq.

Leaders in legal organizations struggle on a daily basis with business models that make it difficult to respond to new market realities. Previous approaches, including traditional diversity efforts that result in a revolving door for female and diverse attorneys, simply aren't working anymore.

Inclusiveness is a new paradigm for the legal industry that takes traditional diversity efforts to the next level. It is the kind of transformative thinking legal organizations need to thrive in the 21st century. Legal leaders in every sector – private and public – are creating inclusive workplaces to leverage their human capital assets; not only to successfully respond to new market realities but also to provide better service to clients.

What is Diversity?

Diversity encompasses the wide variety of human differences, including the more visible (race, age, gender, gender expression, sexual orientation, ethnicity, disabilities, appearance) as well as those that can be less apparent (i.e. religion, marital status, socio-economic status, lifestyle, education, parental status, geographic background, language ability, veteran status, occupational status).

Diversity is reflected by the mix of people in the organization. Everyone - including straight, white men - brings differences to the table that need to be fully incorporated into everything the organization does in order to foster new insights, better decisions, and greater business success. But whether and how differences are actually incorporated depends on the degree to which the structure, culture, and behaviors in the organization are inclusive. It is inclusiveness that delivers on the promise of diverse perspectives and backgrounds.

What is Inclusiveness?

While diversity is a reflection of an organization's composition, inclusiveness speaks to how those different elements are valued and utilized to their full potential.

"Inclusiveness" ensures people with different social identities are fully welcomed, and their different viewpoints integrated, into the organization. Research demonstrates that some groups are underrepresented in most legal organizations. This dynamic is caused by hidden systemic barriers that can be addressed by inclusiveness efforts.

"Inclusiveness initiatives" are programs designed to identify hidden barriers to diversity and then implement structural, cultural, and behavioral changes to eliminate these barriers. Removing barriers enables the organization to better attract, retain, and advance historically under-represented groups and, most importantly, leverage the diverse perspectives and abilities of everyone in the organization. Ultimately, inclusiveness ensures that everyone can do their best work to help the organization achieve higher levels of success.

10 Hidden Barriers Causing Higher Attrition for Female and Diverse Attorneys

According to several major research studies,[i] there are hidden barriers in legal organizations that limit the success of female and diverse (of color, LGBT, disabled) attorneys. Specifically, these groups are disproportionately excluded from opportunities that are intangible but critically important in career development and go beyond hard work and technical skill, including:

1. Networking – informal and formal
2. Internal information or intelligence
3. Access to decision-makers
4. Mentors and sponsors
5. Meaningful work assignments
6. Candid and frequent feedback
7. Social integration
8. Training and development
9. Client contact
10. Promotions

The research studies all point to bias <u>for</u> others (affinity bias) as the major cause of these hidden barriers to success. When senior attorneys gravitate toward and share opportunities with others who are like them, they marginalize female and diverse attorneys and staff. If female and diverse attorneys and staff members feel like outsiders, their engagement, productivity, loyalty, commitment, and willingness to stay decline, which contributes to higher attrition rates for these groups.

Reducing Unwanted Attrition through Leadership Competencies

Leaders play a critical role in whether their organizations can reverse the "revolving door syndrome" for female and diverse attorneys. Traditionally, leaders outsourced responsibility for diversity efforts to others in the organization. Inclusiveness, with its focus on retention and advancement, implicates all procedures and systems so leaders must take an active role. But leaders are often at a loss to know exactly what to do to create an inclusive workplace. That is where diversity and inclusiveness competencies can help, providing concrete behaviors, skills, and actions that create a more inclusive organization. While these competencies focus on inclusion of female/diverse attorneys and staff, they create an environment where *every* person – diverse and non-diverse - is fully engaged and empowered to do their best work for the benefit of the organization.

In a fully inclusive organization, everyone would report they:

- have high levels of engagement,
- are fully included on an equal basis in the opportunities needed to advance,
- are valued and respected, and
- perceive no barriers to their full contribution to the organization's mission.

To create a fully inclusive environment that produces those outcomes, leaders should implement the following competencies:

1. **Personal Responsibility:** Act as a visible leader on diversity and inclusiveness both internally and externally; work to identify and interrupt/eliminate personal biases
2. **Education:** Learn about diversity and inclusiveness-related issues and, especially, how hidden barriers and unconscious bias disproportionately disrupt the career paths of people from under-represented groups
3. **Communication:** Engage colleagues in critical dialogues about diversity and inclusion topics

4. **Model Inclusive Behaviors**: Encourage collaboration, cooperation, engagement, and teamwork across differences by
    - Learning how different groups' values and expectations cause conflicts in the workplace (i.e. generational differences); educating everyone in the organization about different cultural norms and how these can cause misunderstandings
    - Becoming a better listener; creating an environment where everyone feels they are heard and their contributions are respected and valued
    - Actively seeking out and incorporating different perspectives into all decision-making
    - Noticing and proactively including those who are being socially or professionally marginalized at work
    - Demonstrating greater flexibility and openness with respect to people's differences and making it more culturally permissible/possible for people to be themselves and not leave important parts of their identities at the door in order to fit into majority norms
    - Utilizing flex policies and visibly paving the way for others to use those policies as well
5. **Systemic Change:** Make structural, cultural, and behavioral changes to eliminate hidden barriers in the organization
    - Ensure everyone is being invested in and has sponsors and mentors
    - Restructure evaluation and feedback systems to limit subjectivity and interrupt unconscious bias
    - Critically analyze criteria used to assess leadership potential; engage colleagues in a discussion about what promotion benchmarks and leadership qualities are reflected by the dominant group to the detriment of people from historically under-represented groups; create a written and objective set of promotion and leadership criteria, along with competencies and benchmarks for everyone
    - Create evaluation systems that involve more frequent, candid, and objective feedback designed to help people improve their performance
    - Make compensation decisions more objective and transparent
    - Track networking opportunities to ensure everyone has equitable access
    - Create communication processes that are more open and transparent so everyone has access to important internal information on an equal basis
    - Institute work assignment systems that give everyone equitable access to work that is meaningful and leads to advancement
    - Promote processes that make training and development opportunities widely known and accessible to everyone
    - Ensure everyone has equal access to decision-makers
    - Institute a procedure that tracks client contact opportunities and makes those opportunities available on an equal basis
    - Ensure everyone is included in the social fabric of the organization

Legal organizations that persist in using antiquated business models, including 20th Century diversity models, will continue to struggle and post lackluster results. To achieve sustainable diversity, law firms and departments must create inclusive workplaces. Ultimately, everyone in the organization would contribute to the diversity and inclusiveness of the organization through competencies – not just leaders. But nothing will change until leaders start leading on diversity and inclusiveness.

About the Author: Kathleen Nalty is a lawyer based in Denver, Colorado who is an expert in strategies for creating cultures of inclusion to retain and advance talent, especially in legal organizations. Kathleen founded the Center for Legal Inclusiveness and created a comprehensive manual for legal organizations on how to make structural, cultural, and behavior changes as part of an inclusiveness initiative. She specializes in helping legal organizations identify systemic issues that cause higher attrition for female and diverse attorneys.

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[i] American Bar Association, *Visible Invisibility: Women of Color in Law Firms* (2006)(available at http://www.americanbar.org/content/dam/aba/migrated/women/woc/visible_invisibility.authcheckdam.pdf); American Bar Association, *From Visible Invisibility to Visibly Successful* (2009)(available at http://www.americanbar.org/content/dam/aba/migrated/women/woc/VisiblySuccessful.authcheckdam.pdf); American Bar Association, *Visible Invisibility: Women of Color in Fortune 500 Legal Departments* (2013)(available at http://www.americanbar.org/content/dam/aba/marketing/women/visible_invisibility_fortune500_executive_summary.authcheckdam.pdf); Minority Corporate Counsel Association, *The Next Steps in Understanding and Increasing Diversity & Inclusion in Large Law Firms* (2009)(available at http://www.mcca.com/_data/global/images/Research/5298%20MCCA%20Pathways%20final%20version%202009.pdf); Catalyst, Inc., *Women of Color in U.S. Law Firms* (2009)(available at http://www.catalyst.org/knowledge/women-color-us-law-firms%E2%80%94women-color-professional-services-series); Hispanic National Bar Association, *Few and Far Between: The Reality of Latina Lawyers* (2009)(available at http://www.hnba.com/publications/status-of-latinas-in-the-profession-report/); Corporate Counsel Women of Color, *The Perspective of Women of Color Attorneys in Corporate Legal Departments* (2011)(available at http://www.ccwomenofcolor.org/images/es-summary/CCWC_ES_Sample.pdf).