

A vertical split image. The left half is a dark, semi-transparent grey overlay with white text. The right half is a photograph of a sunset over a beach. The sun is low on the horizon, casting a bright orange glow. The sky transitions from orange near the horizon to a deep blue at the top. The ocean waves are visible, and their reflection is seen in the wet sand in the foreground. A dark, rocky outcrop is visible on the right side of the horizon.

DIVERSITY AND
INCLUSION
TRAINING:

What Law Firms Can Learn From Corporate Clients

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Diversity is one of the most popular business topics of the last two decades. It ranks with modern business disciplines such as quality, leadership, and ethics. Despite this popularity, it is also one of the most controversial and least understood topics.

As recently as 2003, the diversity business was estimated to be an \$8 billion industry. Yet D&I training in the corporate arena has a checkered history and a plethora of critics who are convinced that such efforts are a waste of time and money.

Although its effectiveness has been questioned, over the past 30 years D&I training has become common practice in the corporate arena, as the composition of the workforce has changed.

National law firms have similarly been impacted by demographic shifts starting at law schools. These shifts have led to an influx of more diverse talent into the legal profession.

The question of how well firms are able to attract, develop and retain talent has always been important. The fact that such talent is likely to reflect greater diversity raises issues that, in some instances, may be addressed through D&I training initiatives. However, to optimize its benefits, it is important to approach D&I training as an element of a broader strategy.

This is particularly important in law firms where diversity is too often reduced to a matter of improving numbers. The deeper, more intractable issues facing people of color, women, LGBT attorneys, and others who have traditionally been underrepresented goes far beyond numbers.

To be effective, D&I training must be speak to these deeper issues as well.

THE HISTORY OF DIVERSITY AND INCLUSION TRAINING: THE CORPORATE CONTEXT

In order to understand how D&I training can contribute to successful strategies for law firms, it is helpful to have some perspective on how such training—known simply as diversity training—evolved. The corporate sector offers the most important background regarding the incubation of diversity efforts. It is also the most relevant given the importance of corporate clients to law firms.

Initial diversity training efforts in the 1960s centered on legislation and compliance tied to Title VII of The Civil Rights Act of 1964 and related legislation that made it illegal to discriminate based on race, color, religion, sex, national origin, pregnancy, age, and disability. Recipients of the early antidiscrimination training often left with a variety of emotions, few of them positive. Because the training focused primarily on treating historically underrepresented minorities and women fairly and equitably in White male-dominated environments and on avoidance of lawsuits, nonmembers of these groups resented their exclusion and felt that preferential treatment was being afforded to the targeted groups. For some, this resentment was compounded because of the growth of affirmative action initiatives.

In 1987, *Workforce 2000*, published by the Hudson Institute, was released. It showed that the demographic makeup of the “net additions” into the workforce would be comprised of more women

and minorities. Workforce 2000 created a major shift in thinking about the future composition of the workforce and is credited with putting the term “workforce diversity” into the business lexicon and creating an important rationale for the diversity industry.

Three years after the release of Workforce 2000, Roosevelt Thomas shifted the paradigm of diversity from compliance to a matter of business survival. He argued that recruitment was not the central problem; rather, the more serious problems began once someone was hired. Overwhelming data demonstrated that the careers of minorities and women plateau and few were breaking into higher level positions. Thomas suggested that the goal should be to create an environment “where we is everyone.” He argued that something other than affirmative action was needed. “That something else consists of enabling people, in this case minorities and women, to perform to their potential.”

D&I training efforts continued to evolve in the late 1980s through the late 1990s. Although the new rhetoric proclaimed that affirmative action and compliance were different from diversity, many companies continued to combine compliance and diversity training. It was not uncommon for training content to start with compliance topics and then move to diversity content about valuing and respecting differences. This served to confuse learners, who mostly left this type of training believing that diversity was nothing more than a new euphemism for affirmative action.

There were great expectations for the outcomes of the training. At the very least, behaviors would be altered and there was often an implicit assumption that attitudes and mind-sets would also shift. Although it is unrealistic to expect sustained change in what was typically no more than a 1-day exposure, much disappointment was expressed when companies observed no real difference in the work environment.

On the positive side, most corporations that were involved with diversity training wanted to do the

right thing. They recognized that they were losing top talent, not fully engaging those who chose to stay, and that they had much to learn about how human differences could have a profound impact not only in the day-to-day work environment, but also in business outcomes. By the end of the 1990s practitioners were more likely to understand that diversity could not be relegated to a program, but rather that it had to be viewed as an ongoing business process, like quality assurance, and become integrated into the core strategy of the organization. Thus, positioning diversity training as a business driver gained solid footing by 1999.

The 21st century variety of diversity and inclusion training is focused on building skills and competencies that enable learners not only to value differences but also to be able to utilize them in making better business decisions. There is consistent agreement among practitioners that ongoing learning is necessary to become diversity competent. Positioning diversity and inclusion as a competency has created another major paradigm shift; the assumption is no longer that only certain groups need training (e.g., White men or minorities), but rather that all employees need to be more cross-culturally competent in an increasingly global world. It is just as important for an African American male to learn more about, for example, his Chinese coworker or vice versa.

With the evolution of corporate diversity and inclusion training initiatives, we now have a better understanding of the prerequisites for effectiveness.

- ◆ **Diversity and inclusion learning should be integrated, ongoing, relevant, applicable, and based on a solid needs assessment. In other words, a strategic approach is a prerequisite to effective learning and consequent benefit.**
- ◆ **Diversity and inclusion are competencies and as such the learning should be based on building blocks that start with elementary concepts and move on to increasingly more difficult material.**

- ◆ **Diversity and inclusion education should not just happen in the classroom but rather should be integrated into other business processes and activities.**
- ◆ **Diversity and inclusion education is no longer just a U.S. phenomenon. Many companies are expanding their efforts to include global learning.**

WHAT LAW FIRMS CAN LEARN FROM THE CORPORATE EXPERIENCE

Notwithstanding the challenges noted above, in comparative terms, the corporate sector has been at the forefront of the development of diversity and inclusion strategies and training initiatives. The typical corporate client has had to respond to the implications of a rapidly changing workforce for quite some time now.

Given demographic trends, this is not likely to change. Thus, it should not be surprising that the corporate representatives with whom partners and associates will interact in the future will reflect greater diversity and have different expectations and orientation to law and business. The fundamental question is how well equipped will law firms be to respond to this reality.

Large law firms understand this. For many of them, the impetus for their commitment to diversity and inclusion is, to an extent, a result of the need to meet the expectations of corporate clients. While this is laudable in some respects, firms desiring to enhance their results may want to take a closer look at the history of diversity efforts among their clients—especially those with a track record of relative success in this regard. What they will observe for the “best in class” clients is a comprehensive, forward-thinking approach to diversity and inclusion that is more than a reaction to a perceived expectation. It is predictable that clients with strong diversity and inclusion agendas will expect firms to demonstrate a compatible, more comprehensive commitment as well.

The propensity within law firms to focus on numbers and to define diversity and inclusion efforts on that basis limits their strategic benefits.

It has the further effect of directing attention to recruitment efforts without a clear understanding of the critical actions and strategies that are needed once talent arrives. If talent—inevitably more diverse—enters an environment or culture where there is inadequate understanding of the similarities and differences that define individuals, it is likely that the firm will experience a revolving-door syndrome.

This is, of course, a concern even in a business that is explicitly predicated on an attrition model. It is a concern that can and should be addressed through a strategic approach that examines retention policies and practices, culture, accountability standards, and more. In addition to these systemic factors, we know from the corporate experience that there are intrapersonal and interpersonal elements of diversity that cannot be ignored.

Ultimately, attorneys—especially those in leadership positions—must have, and be able to demonstrate, a level of understanding and skill in managing all of these considerations.

DIVERSITY AND INCLUSION: DOLLARS AND SENSE

Competence in the area of diversity and inclusion does not occur by osmosis. It results from an intentional plan and strategy of which training is an integral part.

Well-structured training programs have the potential to promote understanding and competence within a law firm setting. But achieving that goal can prove difficult for attorneys—even those who embrace diversity and inclusion—because of the oft-held view that time spent on diversity and inclusion or other non-billable matters is not in their (or the firm’s) best economic interest. This creates an imperative to demonstrate why training is beneficial. In other words, what are you as the chief diversity officer seeking to

achieve and how will it be beneficial from a financial perspective?

The lesson from corporations tends to embrace micro and macro-level objectives, the former being focused on imparting knowledge or changing behavior, the latter encompassing issues such as culture change, greater retention, and improved productivity. Unfortunately, these types of objectives may seem rather ethereal to the average partner with a preference for concrete (we're talking financial) benefits.

The challenge for diversity and inclusion professionals in law firms is to address this preference when the economic benefits related to diversity and inclusion training are difficult to discern in the short term, if at all. In a real sense, our goal is to develop and implement strategies that promote competency in a manner comparable to the best corporate practices.

But we must do so in a very different organizational context—one with fewer levels or positions for professionals (compared with corporations) and greater hierarchical structure where accountability is difficult to achieve. Moreover, at law firms the billable hour is sacrosanct, making it always necessary to anticipate or respond to the perception that diversity and inclusion efforts will drain away profits.

There is, however, another way of looking at this issue.

Arguably, the economic justification for diversity and inclusion training is predicated on a false premise. Even in an entity where a degree of turnover is helpful, if not imperative, it is nonetheless important to create and sustain an environment where demonstrated behavioral competencies in diversity and inclusion are rewarded.

Why? Because, national law firms are no longer bastions of White male privilege and prestige. And it is increasingly evident that the failure or unwillingness to understand diversity related differences reflected

among attorneys is myopic. This is not to suggest that the economic connection to diversity and inclusion training is not important. It is. Indeed, law firms whose leaders do not have demonstrable diversity and inclusion competence will not be competitive—in any business climate.

This is fundamentally an economic issue, but it is one that reflects a longer-term perspective than the one suggesting a need for immediate "proof" of the economic benefit of diversity and inclusion training.

We often hear that change is inevitable. In a sense, it is occurring before our eyes. Corporations have seen this and are responding to the inevitability of diversity and inclusion. With our help, law firms should be able to respond as well.



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