

The Time is Now: 10 Ways In-house Counsel Can Advocate for Change

Law Department Management





CHEAT SHEET

- ***Early approach.*** In-house counsel can leverage strategic planning skills and proximity to the CEO to incorporate diversity and inclusion into company design, new acquisitions, or the office space.
- ***Welcoming workplace.*** As leaders in the organization, general counsel have a responsibility to make each person feel that they are encouraged to show up to work as their authentic selves.
- ***Language matters.*** Organize and conduct a language audit of internal and external communications to ensure inclusive and non-offending language.
- ***Say something.*** Use your involvement in many projects and decision-making discussions of the organization as an opportunity to call out bias.

Nearly every day, our team at Diversity Lab, an incubator for diversity and inclusion in law, is contacted by thoughtful and well-intentioned in-house leaders who want to learn about best practices for increasing outside counsel diversity. We love these calls because this type of constant high-level client pressure is moving the needle. Having worked with dozens of legal departments of all sizes over the past five years, we happily share which tactics and techniques work and don't work based on our experience so they can benefit from those who have come before them. Toward the end of the conversation, we typically ask, "And what are you all doing internally to boost diversity and inclusion within your own teams and at the leadership level in the legal department?"

Then comes the awkward silence. On rare occasions, we'll engage with a unicorn who lays out a very specific plan of action, which is aligned with their data, outlines where their biggest internal diversity challenges lie, and what they are doing to tackle the inequities. But often, especially in larger legal departments, they don't know their own diversity metrics or how they compare to others. We usually hear: "Well, we seem to be gender-balanced, but we're probably not doing as well from a racial and ethnic diversity and LGBTQ+ standpoint. We don't have a benchmark to compares ourselves to." And even though in-house leaders expect their outside counsel firms to track and submit timekeeper and firmwide diversity data to them annually as "the client," and also publicly via American Lawyer, the ABA Model Survey, MCCA, and other venues — they do not do so themselves.

It's time to turn the mirror inward. As in-house counsel, you hold incredible power within your companies and have the potential to play a phenomenally important role in supporting and pushing for diversity in your legal departments and more broadly within your organizations.

In light of the global workplace disruption caused by COVID-19, the recent racial justice movements sweeping nations, and the feeling of increased political polarization in the United States, we need more people to become intentional advocates for real change now more than ever. You have the power and influence to get things done — why not use that power for the good of the legal profession, your companies, and society as a whole?

The authors of this article offer 10 exemplary and very practical steps that in-house lawyers can take to boost diversity, equity, and inclusion in their legal departments and companies. I hope you will challenge yourself to answer at least three of these calls to action before the year concludes.

– Foreword by Caren Ulrich Stacy, founder of DiversityLab

Introduction

Over the last decade, the focus and energy on corporate diversity and inclusion efforts have yielded mixed results. While it has been the chief diversity officer or human resources function that has “led the charge,” in-house counsel have been overlooked as potential chief architects and drivers of change. In-house counsel are well positioned to be the culture creators and champions, advocates, and leaders for diversity and inclusion efforts. Because of the breadth of the role that in-house counsel play in an organization and the interaction and myriad touchpoints within the business, it begs the question of why in-house colleagues do not more frequently drive diversity and inclusion. Who better to lead the charge than in-house counsel who understand the legal implications of such change along with the ability to lead using a diversity and inclusion lens.

The sophistication and support, both financial and from leadership, that corporate diversity and inclusion programs receive variy significantly. According to a Deloitte Review from 2017, only about 12 percent of companies have reached Level 4 (integrated) on the diversity and inclusion maturity model. Fifteen percent are at Level 3 (leader-led), 31 percent are at Level 2 (programmatic), and the remaining 42 percent are at Level 1 (compliance). That means that at the time of the study over 70 percent of companies were merely focusing on compliance (e.g., adherence to EEO laws) and programmatic efforts (e.g., some level of programs but uneven buy-in among leadership). These statistics are from three years ago but today’s reality isn’t drastically different. While the statistics certainly reflect that most companies have not reached the maturity to fully embrace an inclusive culture, many continue to indicate that they understand and desire the value that a diverse and inclusive workforce will bring. To achieve broader impact, more people need to intentionally act. In-house counsel are well suited to meet this challenge by helping their respective organizations move along the inclusion model.

In-house counsel are continuously developing and expanding their respective roles within organizations. With that role expansion comes an expansion of potential impact for diversity and inclusion gains. In-house counsel wear a number of hats simultaneously. While we provide legal advice at the core, more frequently we are called upon to play additional roles as business strategist, mediator, and negotiator. It seems logical to include the role of D&I champion to the mix.

In an environment where moving the needle on diversity and inclusion is essential to compete in the modern economy and talent war, in-house counsel could provide another layer of support and promotion both internally and externally.

In-house counsel can and should use their position to be strong advocates and champions for diversity and inclusion efforts. Now is the time to leverage our roles as in-house counsel with the following calls to action.

1. Use the scope and breadth of connectivity throughout the organization

In-house lawyers are extremely well connected within most organizations and touch a myriad of projects and activities, including advising on matters related to new acquisitions, talent strategy and retention, design of compensation and benefits, company foundation and giving, and handling of internal and external conflicts and litigation. As described in the examples below, these different

touchpoints provide significant opportunity for in-house counsel to advocate for diversity and inclusion in real time, even if not in an “official” capacity.

Example

Review facility contracts to ensure proper accessibility. As an in-house lawyer on the cross-functional team tasked with finding a new office space for your organization, suggest the team be sure that access is top of mind and suggest drafting the contract to ensure the new office space incorporates an expectation for access and ease of use for disabled employees and visitors, beyond the standard ADA requirements.

2. Leverage insight into strategy and future organizational plans

Many in-house lawyers have an early seat at the table when thinking about company design, new acquisitions, or acquiring new office space. Each of these activities provides a real opportunity to be an advocate for diversity and inclusion. Leveraging strategic planning skills, customary positioning in the C-suite and close proximity to the CEO affords in-house counsel the opportunity to use their insight, respect, and influence to build the cornerstones of diversity and inclusion within their organizations.

Example

Play the role of contrarian to avoid groupthink and confirmation bias. As an in-house lawyer with a commercial transaction focus, you participate in a conversation about the future state of your organization. As part of that conversation, the group continues to agree on who the right leaders are to lead certain key projects and the same set up and structure for an approach on a new project. Be the contrarian and ask what if the group got outside the box and considered someone with a different background and skillset than typically considered for this role or took a novel or unusual approach on this project.

3. Increase exposure to and with the board of directors

It is no secret that corporate boards do not have significant representation by women or other minority groups. Access to and relationships with board members provides a unique opportunity for in-house counsel to advocate the need for additional diversity, even in the absence of formal corporate D&I programs.

Example

As a corporate lawyer in charge of board governance, you are part of the discussion about adding another board member due to an upcoming retirement. The conversation leads into a round robin of potential candidates. You mention the company’s recent commitment to D&I and advocate that a highly visible board seat would be a phenomenal opportunity to put those words into action. As part of that discussion on process, you volunteer to interview search firms and strongly relay that message.

4. Use knowledge of legal issues related to diversity and inclusion programs

In-house lawyers, particularly those with compliance and/or labor and employment backgrounds, are aware of the range of legal risks that certain diversity and inclusion programs pose to an organization. Being aware of what the company is considering and offering alternatives is a real added benefit.

> **Be the contrarian and ask what if the group got outside the box and considered someone with a different background and skillset than typically considered for this role or took a novel or unusual approach on this project.**

Example

Require diverse candidates/placements from recruiting companies and vendors. As an in-house lawyer supporting your company's procurement department, you are in charge of the annual review of all the vendor and staffing company agreements. In order to assist improvements on diversity, you include a provision mandating that the company provide a diverse slate of candidates for every position they recruit. Legal can lead by example in this area by signing up for the Mansfield Rule Certification Process, which requires legal departments to consider at least 50 percent historically underrepresented lawyers for external hires, promotions, and outside counsel staffing.

5. Lead through a D&I lens

An important part of holding a leadership position is making each employee, client, customer, stakeholder, and community member feel that diversity and inclusion matter and that they, not only can, but are encouraged to show up to work as their authentic selves inclusive of all of their intersectional identities. Studies show that employees who can show up authentically at work are more satisfied with their jobs and are easier to retain. In order to build a rewarding employee experience, you need to understand what matters to your people. Where and to whom people dedicate their time and money is one good indicator of what matters to them.

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Example

Encourage diversity in the company's charitable giving. As a member of the company's corporate giving team, you are tasked with helping build the strategy on which organizations the company will provide financial and/or volunteer support. Suggest sending a survey to employees asking what organizations they are passionate about or suggest supporting a new nonprofit whose mission is to raise awareness and learning about how redlining has impacted the make-up of the city.

6. Display exceptional ethical standards

Most attorneys have a high standard of morals and ethics by virtue of their oath and responsibilities as sworn upholders of the law. In line with these standards is the innate avoidance of unfairness, discrimination, and retaliation in employment and management practices. When the standard of ethics is established and modeled from the C-suite through collaboration between the CEO and in-

house counsel, it sets the tone for an ethical organizational culture and promotes ethical practices by the organization and its employees.

Example

Review the Employee Handbook and Code of Ethics to ensure clear communication of the organization's ethical standards, practices, cultural expectations, and consequences for violations. Clearly communicate the organization's "zero tolerance" stance for discrimination, harassment, and abuse and thoroughly investigate and handle any allegations of misconduct. Offer trainings for managers and high-level leaders regarding ethical management standards to ensure that abuses of managerial power are not occurring within the organization.

7. Highlight the benefits of intersectionality

It is no secret that high-level organizational positions are often held by cis-gender, white men, and there is a lack of diversity and inclusion in executive level hiring and promotion. Simply put, there is extreme value in the inclusion of women, BIPOC (Black, Indigenous, and persons of color), non-binary, and otherwise diverse professionals in the role of in-house counsel. Undoubtedly, the intersectionality of identities of, for example, a Black lesbian woman as in-house counsel brings inherent diversity of perspective, lived experience, and expertise to the position. Since this role generally has the ear of the CEO, that individual's intersectionality can play a pivotal part in the organization's efforts to achieve diversity, inclusion, equity, and justice.

Example

Simply sharing your lived experiences with those in the C-suite and pointing out ways in which the organization can display a more intersectional approach will go a long way for diversity and inclusion efforts in the organization. If a high-level decision is being made and in-house counsel notices that despite the best of intentions, the outcome of the decision would have a disparate effect on diverse professionals within the organization, bringing that to the attention of colleagues who don't have the same lived experiences or may have privilege that lends itself to blind spots for those colleagues would greatly improve the organizational culture and the experiences of the employees.

8. Advocate for an organizational language audit

In-house counsel with a diversity and inclusion lens, eye for detail, and possessing decision-making authority should coordinate with the company strategy officer and/or marketing professional to conduct an organizational language audit of all forms, publications, handbooks, policies, procedures, and media so that all communication touchpoints within the organization have inclusive and non-offending language universally. The language used by an organization speaks volumes about the culture and its commitment to diversity.

Example

A 100-year old human services organization specializing in services to youth, young adults and their families has been using the same intake process for many years, including only binary gender identities, classifications for parents that are non-inclusive of same-sex marriages, and racial and ethnic categories that do not allow for identification of multi-racial identities. Additionally, marketing materials include dated and offensive language such as "at-risk" to describe the target service

population. In-house counsel assembles a work group inclusive of herself, the C-suite level strategy leader, the marketing manager, the HR manager, and strategically selected program staff to conduct a language audit of organizational documents and establish new intake procedures with plans to train all employees on the changes.

9. Call out bias

The opportunities to identify and address unconscious bias in the legal profession and corporations generally are significant. Given that in-house lawyers are involved in a wide variety of projects and decision-making discussions, we have ample opportunity to shine a light on areas where bias may creep in, particularly around hiring and firing, discipline, promotion decisions, high visibility work assignments, performance reviews, etc. Asking the right questions in certain moments can be incredibly powerful. Furthermore, speaking out in the moment when you see bias in action is the micro-action needed.

Example

In-house counsel, whose areas of responsibility also include HR functions, notices that white candidates for employment with criminal records and/or less desirable qualifications are more likely to be allowed a chance at entry-level employment with the company than candidates of color with the same types of criminal and experiential backgrounds. In-house counsel meets with the HR specialist who conducts initial screenings for applicants, addresses the importance of avoiding bias in hiring, and creates a plan to conduct a joint review of all applicants with a criminal history and/or qualifications that do not quite meet the job description, creating a bias check for the company.

10. Be a language leader

Lawyers know that the words we use in both verbal and written communication have significant legal impact. We are trained to know that a comma here, capitalized word there, and specific word choices can mean the difference between winning or losing the bet the company litigation. Be a language leader in the way we speak to and about each other in the workplace as well.

Example

In an all company town hall, each of the business division leaders provides business updates and forecasting future strategy. As part of that communication, you hear several of your business partners refer to going after “the guys” and ensuring that “the guys” on the team are ready to tackle new challenges, and we are looking for “a guy” to run operations in Argentina. You know none of your business partners mean anything by it, but you call them individually afterward and share the tally of how many times they referenced needing “the guys” and how their words matter.

Conclusion

In practice, there are a number of practical scenarios where in-house counsel can influence diversity and inclusion efforts — when they are intentional about doing so.

> **The language used by an organization speaks volumes about the culture and its commitment to diversity.**

At the end of the day, to really move the needle on diversity and inclusion in the corporate environment, we need all hands on deck. It is time for in-house lawyers to embrace their unique role within their respective organizations and use their influence and knowledge to further the corporation's diversity and inclusion efforts.

ACC EXTRAS ON… Advocating for diversity and inclusion

ACC Docket

How Companies Can Commit to Diversity and Inclusion Holistically (June 2020). accdocket.com/articles/how-companies-can-commit-diversity-and-inclusion.cfm

In-house Counsel as Champions of Organizational Diversity and Inclusion (Aug. 2019). accdocket.com/articles/in-house-counsel-champions-of-diversity-inclusion.cfm

Increasing Diversity and Inclusion Through Engaged Corporate Counsel (July 2019). accdocket.com/articles/resource.cfm?show=1502761

ACC HAS MORE MATERIAL ON THIS SUBJECT ON OUR WEBSITE. VISIT WWW.ACC.COM, WHERE YOU CAN BROWSE OUR RESOURCES BY PRACTICE AREA OR SEARCH BY KEYWORD.

References

A Mere 12% Of Companies Are Truly Inclusive -- Here's How To Fix That

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