



## **DEI, ESQ: What Gets Measured Gets Done**

**Cultural Competence**

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This is a common adage in corporate America. And with the best of intentions, many in-house legal departments ask their law firms for demographic data on the lawyers assigned to do their work. However, many law firms report that once the data is submitted, they never hear from their clients again. This may inadvertently send the message that the data doesn't really matter, and the lack of follow-up does nothing to advance the diversity and inclusion needle. So, what's a time-limited in-house legal department to do?

1. **Don't reinvent the wheel.** The ABA offers a [Model Diversity Survey](#). The benefits the survey has are data uniformity, time efficiency, and year over year trending, in aggregate and for individual firms. The survey is free of charge for corporate signatories and stakeholders and does not require a paid membership to use.

**Corporations simply need to become a signatory to gain real-time access to any law firm's diversity demographic data submitted in response to the Model Diversity Survey.** The survey offers transparency to corporate clients. It allows for the measurement of trends in law firm partnership ranks, hiring practices, attrition rates, lawyers working on flexible schedules, and the demographics of highest compensated attorneys. The survey also allows for GCs and law firm relationship partners to agree upon "client-specific" questions, which is more efficient and cost-effective than filling out entirely separate questionnaires.

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We suggest you ask open-ended questions to understand why the numbers are what they are, rather than offering criticisms.



Consider asking open-ended questions to ensure a good understanding of key findings. Danielala / *Shutterstock.com*

2. Take the time to review submitted data and commit to responding to your firms. The response does not need to be detailed but should acknowledge any significant change that you observe. If there appears to be stagnation, you can note that as well. **We suggest you ask open-ended questions to understand why the numbers are what they are, rather than offering criticisms.**

3. Consider tracking the demographics of the lawyers assigned to your matters. Do not be dissuaded by the retort that the firms do not have this data, or do not have it for all lawyers assigned to your work. Firms with over 100 employees have to complete an annual EEO-1 report which contains such data. At a minimum, this will identify the demographics of the associates on your matters.

**While it is true that some individuals may choose not to self-identify their race and/or ethnicity, the EEOC instructs the employer to make an educated guess in those circumstances.** That educated guess is sufficient for your purposes. Also watch for game-playing with the data, such as including non-equity partners in the count of equity partners or including lawyers in foreign offices. While hopefully not a common practice, such data manipulation does occur. To avoid this, provide clear definitions.

4. **If you do not have the bandwidth to track data, consider asking for a qualitative statement instead** of numbers. In addition to requesting and analyzing data, consider requesting that the partners working on your matters supply a personal statement of commitment to diversity and inclusion — rather than merely providing the carefully curated diversity brochure prepared by the firm's diversity professional.

This is effective in emphasizing an individual's commitment and not just the collective. This individualized approach lets each lawyer contribute in a way that feels authentic to them and can be easier to assess than tracking data. The personal commitments do not need to be updated annually; every three years is sufficient.

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professional.

5. **Evaluate whether the work assigned to underrepresented lawyers is quality work** and watch for the tendency of some firms to dump work on underrepresented lawyers in mid-December to meet your hours expectations which they then write off.



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6. If you have periodic meetings with all of your firms, consider having a panel where firms share their diversity, inclusion, and belonging strategies or bringing in an external speaker to address this topic. **Have your GC reaffirm their commitment.** The idea here is to collaborate on best practices and create a culture of prioritizing diversity and inclusion.

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7. **Consider developing a scorecard for your top billing firms.** You can rate various areas such as representation of under-represented lawyers on the equity partnership or on key committees. Rank your firms and let them know where they stand relative to other firms. You might want to shield the names of the other firms on the list. Relative ranking is often enough of a motivator when a firm is low on the list.

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**8. If you have bandwidth, consider inviting the relationship partner in your firms to visit your office or meet virtually on a bi-annual basis to talk about their diversity and inclusion efforts.** These can be informal touch base meetings, but just the ask to participate in them reinforces to those firms the importance of diversity and inclusion. You can talk about the personal commitments and any demographic trends you observe. You will learn a lot from these meetings. For example, are they primarily focused on mentoring high school students as part of a very long-range pipeline strategy or are they working to ensure equitable compensation for their partners?



Make time to connect with relationship partners in your firm in regard to their strategy amongst DEI initiatives. KrerckStock / Shutterstock.com

**9. Offer to be part of the solution.** You can speak at a partner meeting about why diversity and inclusion are important. You can share best practices. Watch, though, for the tendency of some firms to ask you to solve their problem by asking you to send them more work. More work should be a reward for doing well, not the way in which improvement is made.

We all have a role in advancing diversity, inclusion, and belonging. As in-house lawyers, we have a lot of influence on how our clients respond. There is no reason to be reticent in expressing the values of your organization and in asking the vendors with which you partner to do the same.

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Jane Howard-Martin is vice president and assistant general counsel for Toyota Motor North America, Inc. (TMNA) and manages the Labor, Employment, Immigration, Benefits and Trade Secrets practice. Howard-Martin leads the labor and employment practice group that is responsible for providing legal advice and counsel and managing litigation and labor matters for a workforce of 33,993 based in our North America affiliates, including the nine North American Manufacturing Centers (NAMCs), R&D, Finance, and Headquarters functions.

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Prior to joining Toyota in 2003, Howard-Martin was a partner with Morgan, Lewis and Bockius, LLP in their Los Angeles and Pittsburgh offices, and previously was a partner at Kirkpatrick & Lockhart in Pittsburgh, Pennsylvania.

Howard-Martin has been featured in a number of publications and symposiums. She authored a column on employment issues for USA Today.com, a treatise on Title III of the Americans with Disabilities Act and served on the Editorial Review Board of the Pennsylvania Labor Letter. Howard-Martin also appeared as a panelist on MSNBC's "Today in America" on the issue of harassment. She is a frequent speaker on employment law topics at various conferences including those held by the ABA, the National Employment Law Council, and the American Employment Law Council. In November 2020, Howard-Martin received the ABA Honorable Bernice B. Donald Diversity, Equity and Inclusion in the Legal Profession Award. She is the past President (2009) and currently serves on the board of directors of the California Employment Law Council and is also a board member of the American Employment Law Council. She is also a fellow with the College of Labor and Employment Lawyers.

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Jennifer Jones is managing counsel in the labor and employment group at Toyota Motor North America, Inc. She has over a decade of experience counseling employers on a broad range of labor and employment law issues. As one of the founding members of DEI, Esq., she has a deep passion for diversity, equity, and inclusion, and has authored many articles and participated in many panels on the subject. She also sits on the board of two nonprofit organizations, both with a mission of ensuring that children from disadvantaged backgrounds have access to quality secondary and post-secondary education. In her free time, Jones strives to be a “fun mom” for her two small children

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