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INSIGHT ON DIVERSITY

Ways to Ensure Your Evaluations Promote Diversity, Equity, Inclusion and Belonging

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Special to the Legal

For any new attorney, the evaluative process can generate a range of emotions. For some, the prospect of receiving feedback is exciting. Others, however, experience feelings of anxiety and insecurity. For many attorneys of color, as well as those with a disability, different ethnicity or sexual orientation, the performance evaluation process tends to spawn mixed feelings. As a Black associate, there was only one question that came to my mind before my mid-year review. How have I represented my race in these first six months? This has much to do with stereotypical assumptions that have led to closer monitoring and higher scrutiny for those in diverse groups, frequently with little to no opportunity for professional coaching or development. Consequently, diverse attorneys commonly receive lower overall performance evaluations, smaller raises and fewer promotional opportunities. For example, Reuters reports that 36% of 2020 summer associates who received job offers afterward were from underrepresented racial and ethnic groups, but that percentage decreased with seniority level.

In that same year, attorneys from minority groups accounted for less than 28% of all associates, and only 10%-12.5% of nonequity and equity partners. The inverse, of course, was true for white attorneys at large firms. While they accounted for about 64% of summer associate hires, they represented 90% of all



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equity partners. These disparities reveal that the legal community must continue to eradicate systemic forms of oppression present within the profession. One way to start this work is by reviewing evaluation processes to ensure they align with diversity, equity, inclusion and belonging (DEIB) principles.

In the United States, structural racism is broadly defined as historical, cultural, institutional and interpersonal dynamics that benefit those most advantaged while simultaneously disadvantaging those most marginalized, which ultimately creates a deep-rooted system of inequity. As described by New York Times bestselling author, Dr. Ibram X. Kendi, "structural racism is like a rain that falls on everyone in a society—no one is immune to or exempt from structural racism." In other words, people can participate in systems, institutions and practices, including longstanding methods of evaluating employees, which perpetuate racism, misogyny, and homophobia without recognizing them as such, and without holding strong personal beliefs that reflect those forms of oppression. Therefore, all evaluators,

regardless of demographic designation, are susceptible to perpetuating forms of oppression that are ingrained within American systems and within the legal profession. So, the question becomes, what do we do about it? The following strategies are suggestions to help firms and legal departments begin to deconstruct systemic forms of prejudices present within many evaluation processes:

No Surprises. Unfavorable feedback should not be heard by the recipient for the first time during a performance evaluation. Many employers do not realize that the failure to provide constructive feedback to diverse candidates is a pillar of structural racism that erodes trust at the same time it expands feelings of isolation and exclusion for diverse attorneys. Timely feedback is essential for professional growth and development. The sooner someone is made aware of a problem, the quicker they will have an opportunity to learn from it and fix it. Actualizing DEIB principles requires leaders to take responsibility for ensuring that all members of their teams are performing at their highest levels. Providing a timely, transparent assessment of a person's performance not only helps to improve that person's skills but also connects the individual's efforts to the mission of the firm.

Equally frustrating to late or no feedback is only hearing about one's weaknesses without any input about a development plan to cure noted deficiencies. For example, I worried that as a Black attorney I would not be afforded the same period of time or grace to improve as my

white colleagues were given. However, receiving consistent feedback throughout my first six months not only lessened my anxiousness but contributed to my ongoing professional development. Before giving feedback on an evaluation, consider asking the candidate whether or not that information was previously raised at or about the time their work was completed on the project. If it wasn't, the reason for the delayed assessment should be addressed to the recipient by the supervising attorney, and practices should be implemented to provide timely feedback. Additionally, consider giving new attorneys the criteria they will be evaluated on when they begin their employment with your organization. This serves the binary purpose of clarifying expectations while simultaneously reducing the risk of surprise during the evaluation process.

Provide Examples. Pair each point of feedback with a specific example of how the candidate excelled or how they can improve. Evaluations are incredibly ineffective when the candidate does not fully understand how they excelled and what can be improved. In the aftermath of George Floyd's death, an important dialogue began about the stark challenges still plaguing people of color in and out of offices throughout the country. Not only do diverse employees continue to experience prejudice, micro aggressions, double standards and unconscious bias, but diverse lawyers in many instances are held to a much higher standard than their majority male peers. Moreover, despite the increase in the receipt of degrees from distinguished undergraduate and professional schools, diverse attorneys are still presumed to be less qualified. For example, the American Bar Association reported that Asian Americans are often perceived as having hard skills, such as hardworking, logical, and careful, but are regarded as lacking soft skills such as client development. Thus, one of the most effective ways of dismantling institutional racism is to commit toward the intentional development of every lawyer on a team. The provision of candid, comprehensive feedback, coupled with

objective professional development initiatives shows not only diverse employees that they are cared about, but demonstrates the organization's commitment to the development and advancement of all talented people on its team. Giving feedback with examples provides the recipient with a clear picture of what their areas of growth are and where they are excelling.

Communicating with all lawyers regularly, providing clear communication about their priorities, direction and developmental opportunities, will not only create more successful teams but, also, ensure that diverse candidates truly feel they have the opportunity to thrive within your organization.

Police Professionalism, Not Personality. Look out for subjective criteria in your evaluation where implicit bias can and often will emerge. Implicit bias is defined as the implicit associations that are harbored in one's subconscious that cause individuals to have feelings and attitudes about other people based on characteristics such as gender, race, ethnicity, and appearance. One place where implicit bias can emerge is in evaluations. To put it simply, if the criteria in the evaluation cannot be clearly defined, it does not belong in the evaluation. When diverse candidates feel policed for who they are in an evaluation, it can lead to increased covering and a growing fear that they do not belong. Kenji Yoshino, New York University's Law School Chief Justice Earl Warren Professor of Constitutional Law, described "covering" as behavior that occurs when individuals downplay or reject manners, affiliations, or activities in order to "fit in" at work. Covering behavior often occurs when diverse candidates feel that their organization does not value their identity and the customs or practices associated with that identity. To ensure that the evaluation does not include subjective criteria, allow multiple stakeholders from diverse backgrounds to review the evaluation criteria and process. Additionally, if feasible, consider investing in the expertise of

DEIB consultants to review your evaluation process to ensure it reflects your organization's commitment to DEIB. This evaluation strategy ensures that multiple stakeholders are included in the evaluation process to implement culturally competent evaluations.

This is a call to action to review your evaluation processes as all workplaces should strive to implement these

suggestions. DEIB work requires intentional action to review all policies and practices that may unintentionally uphold systems that disadvantage marginalized groups. An important step in the process of eliminating biases and stereotypical assumptions is committing towards the development of an equitable evaluation process. Communicating with all lawyers regularly, providing clear communication about their priorities, direction and developmental opportunities, will not only create more successful teams but, also, ensure that diverse candidates truly feel they have the opportunity to thrive within your organization. •

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