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Strength in Diversity

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Best Practices to Address Disability Inclusion in the Legal Profession



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According to current statistics, 61 million adults in the U.S. have a disability,² yet only 19.1 percent of that group is employed.³ Of that percentage, the legal profession's share of disability employment is staggeringly low. A report from the National Association for Law Placement noted that 1.22 percent of all lawyers "identified" as having a disability, including 1.07 percent of partners and 1.25 percent of associates.⁴ The American Bar Association's (ABA) 2021 Model Diversity Survey reinforces these low percentages, with less than 1 percent of law firm equity partners, non-equity partners and associates identifying as being disabled.⁵

Why are these percentages so low, both for the overall employment market and for law firms? They are driven, or are rather undone, by a key factor: self-identification.⁶ Attorneys with disabilities are not self-identifying, or disclosing their disabilities to others, and are therefore not being accurately accounted for in these surveys. This article considers potential barriers to self-identification/self-reporting and provides a few best practices law firms and companies can take to help foster it.

Defining "Disability"

It is necessary to understand how broad the definition of "disability" is to appreciate the impor-

tance of self-identification. The Americans with Disabilities Act defines disability as "(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in paragraph (3))."⁷ "Major life activities" include, but are not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working."⁸ Thus, the scope of disability reaches across all aspects of society, regardless of race, ethnicity, age, gender, religion, sexual orientation, gender identity, gender expression or economic status.

There are two categories of disabilities: apparent and non-apparent. Apparent disabilities are visible to an observer, such as someone using a wheelchair or other mobility device, wearing hearing aids or glasses, or using a service animal. Non-apparent disabilities are "not visible from the outside, yet can limit or challenge a person's movements, senses, or activities."⁹ A few examples are cancer, diabetes, epilepsy, heart disease, autism, attention-deficit/hyperactivity disorder, depression, anxiety and post-traumatic stress disorder. Stated simply, until a coworker self-identifies, you do not know whether he/she has a disability.

Fear of Discrimination

Self-identification in this context means informing others, such as employers and cowork-

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² "Disability Impacts All of Us," Ctrs. for Disease Control and Prevention, available at [cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html](https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html) (unless otherwise specified, all links in this article were last visited on June 27, 2022).

³ "Persons with a Disability: Labor Force Statistics — 2021," U.S. Dep't of Labor (Feb. 24, 2022), available at www.bls.gov/news.release/pdf/disabl.pdf.

⁴ "2021 Report on Diversity in U.S. Law Firms," Nat'l Ass'n for Law Placement Inc. (January 2022), p. 10, available at nlp.org/uploads/2021NALPReportonDiversity.pdf.

⁵ "2021 ABA Model Diversity Survey," Am. Bar Ass'n, pp. 23-24, 27-28, 31-32, available at americanbar.org/content/dam/aba/administrative/diversity-inclusion-center/2021-md-survey-2nd-edition.pdf.

⁶ Merriam-Webster defines "self-identification" as "identification with someone or something outside oneself," available at [merriam-webster.com/dictionary/self-identification](https://www.merriam-webster.com/dictionary/self-identification).

⁷ Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* (1990). The Act prohibits discrimination against individuals with disabilities in all areas of public life, including employment.

⁸ *Id.* at § 12102(2)(A), *et seq.*

⁹ See "What Is an Invisible Disability?," Invisible Disabilities Ass'n, available at invisibledisabilities.org/what-is-an-invisible-disability.

ers, that one has a disability or disabilities. In doing so, employees can (1) discuss accommodations that will assist in their performance of the job, (2) connect with others who have disabilities and form a support network or affinity group at work, and (3) help foster an inclusive culture in the workplace. They also can be a resource for someone who is struggling with disclosing a disability. By being their “authentic” or “complete” selves in the workplace, employees who self-identify as disabled can be more comfortable, can avoid feeling like they need to diminish themselves or their experiences by not disclosing their disability, and can focus on their work.

However, some individuals prefer to remain silent out of a fear of discrimination, which can be either overt or hidden. For example, employers may minimize a disabled person’s interactions with clients, assign them lower-level projects, or reduce their workload altogether based on assumptions about what they cannot do. For example, because I am hard of hearing, an employer may assume that I cannot effectively litigate, even though I have done so throughout my career. People with disabilities have likely encountered these misassumptions, biases and stigmas throughout their lives or have seen them applied to others.¹⁰

Employees with disabilities also may prefer not to disclose them because they fear harassment and ridicule from colleagues. This may include derogatory remarks made directly to the employee or derogatory jokes made by other coworkers about the employee. Such remarks might be about the disability itself, accommodations that the employee uses, or perceived advantages or preferential treatment the employee is receiving.

Discrimination in all forms, not just against those with a disability, may result in not only the employee suffering mental anguish and being ostracized from coworkers, but also poor work product and increased turnover. In addition to the mental health implications, increased turnover represents a loss to the employer of the training invested in that employee. Discrimination also reaches beyond the employee to other coworkers, such as those who may have an undisclosed disability, become disabled later in their careers, or have friends and/or family members with disabilities. Based on what they have observed, these coworkers may also find the workplace to be discriminatory and/or exclusionary, which can impact their own mental health and well-being.

Suggested Best Practices

By their very nature, individuals with disabilities are creative and innovative because they must adapt to, and interact with, the world in which they live. They “develop strengths such as problem-solving skills, agility, persistence, forethought and a willingness to experiment — all of which are essential for innovation.”¹¹ By excluding this group from the labor market, companies and law firms are

depriving themselves of a rich talent pool.¹² A more diverse workplace can reduce staff turnover, improve employee productivity, increase awareness of diverse customer needs and company branding, enhance a company’s reputation, and expand a company’s market share/patronage to a significant section of the population.¹³ One study noted that if 1 percent more people with disabilities joined the workforce, the national gross domestic product could increase by \$25 billion.¹⁴

How can law firms and companies attract, retain and advance these individuals? They can do so by creating an inclusive and accessible environment and conveying that message of inclusivity to prospective and current employees, clients and business partners. Discussed herein are some best practices for doing so.

Accommodations

The onus is typically on employees with disabilities to request a workplace accommodation. Depending on the employer’s messaging, employees may be concerned that an accommodation request could be perceived as a complaint/request for preferential treatment or be perceived as creating more work for their employer. This is not the case, as accommodations help employees perform their job functions to the best of their ability, therefore these requests benefit coworkers, employers and clients. Some examples are remote work (for an employee with a mobility impairment), closed-captioning telephonic devices (for a hard-of-hearing or deaf employee), flexible schedules (for employees with psychiatric disabilities), or a foot mouse (for employees unable to use a desktop mouse). While employers may be concerned about the costs, a recent study concluded that nearly 60 percent of requested accommodations cost employers *nothing*, and the remaining 40 percent typically cost the employer up to \$500.¹⁵

It is important to emphasize that there is no one-size-fits-all approach to accommodations. Employers should defer to the employee about what accommodations are needed. Engaging in an open dialogue not only communicates inclusivity but also ensures that the employee is receiving the appropriate accommodations. Benefits of accommodations include increased productivity and retention, thus eliminating the need to hire and train a new employee.¹⁶ In addition, accommodations improve the employee’s ability to interact with coworkers, leading to an increase in overall positive company morale and productivity.¹⁷

A dialogue about accommodations is also critical as law firms and companies continue to navigate the COVID-19 pandemic. They should consider how to balance “return to the office” policies with remote work and teleconferencing. Employees with disabilities have requested these accommodations for years, but they were denied for various reasons, such as lack of infrastructure and preference for employer/

¹⁰ “Diversity and Inclusion in the American Legal Profession: First Phase Findings from a National Study of Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+,” Am. Bar Ass’n, p. 47, available at americanbar.org/content/dam/aba/administrative/commission-disability-rights/bbi-survey-accessible.pdf (reporting that “people with a health condition or impairment, and who identify as a person with a disability, reported experiencing proportionately more overt forms of discrimination, such as bullying and harassment, as compared to people who do not have such conditions”).

¹¹ “Getting to Equal: The Disability Inclusion Advantage,” Disability:IN/Am. Ass’n of People with Disabilities (2018), p. 12, available at accenture.com/_acnmedia/PDF-89/Accenture-Disability-Inclusion-Research-Report.pdf.

¹² *Id.* at 4.

¹³ *Id.* at 13-14.

¹⁴ *Id.* at 4.

¹⁵ “Workplace Accommodations: Low Cost, High Impact,” Job Accommodation Network, p. 2, available at askjan.org/publications/Topic-Downloads.cfm?pubid=962628&action=download&pubtype=pdf.

¹⁶ “Disability Employment and Inclusion: Your Guide to Success,” Workplace Initiative (2017), p. 3, available at askjan.org/training/Handouts/upload/Disability-Employment-and-Inclusion_Your-Guide-to-Success.pdf (“Business Case” section).

¹⁷ *Id.* at 3-4.

employee “face time.” Notably, remote work and teleconferencing were used exclusively at the height of the pandemic to ensure continued client service and workflow. That should not be discounted as policies are analyzed.

Affinity Groups

As previously noted, affinity groups for attorneys and employees with disabilities provide a venue for similarly situated individuals to gather, along with allies, to discuss issues and questions that may impact their lives. They also provide an immediate resource for employees with disabilities starting their careers, as well as for those who become disabled later in life.

Data Collection

Law firms and companies should collect voluntary demographic data, including disability, on an ongoing basis, and not solely at the time of hiring. Doing so sends the message that they are open to and inclusive of employees with disabilities. This data allows law firms and companies to measure their progress regarding disability diversity and to create a strategic plan with action steps.

Accessibility

Accessibility is essential to creating and fostering an environment where attorneys and staff with disabilities feel acknowledged, accepted and empowered. Law firms and companies should examine how they connect with their employees, clients, potential clients and the public, and whether those methods are accessible to persons with disabilities. The following are examples of questions that employers should consider:

- Are your emails in a format accessible by screen readers?
- Are your billing forms and tables readable by screen readers?
- Are your videoconferencing systems automatically set up to display closed captions?
- Is your website accessible¹⁸ (e.g., videos or podcasts include transcripts, headings properly tagged for screened readers, alternate text for images on websites and social media, etc.)?
- What steps, if any, have you taken to address employee mental health and wellness?
- Do you include disability when you collect demographic data, host diversity, equity and inclusion programs, and plan meetings and events?

Public Statements of Support

Employers can also use public messages to express support for individuals with disabilities. This can be done through pledges, external events, mentorships, sponsorships and internships. Some examples include the ABA’s “Disability Diversity in the Legal Profession: A Pledge for Change,”¹⁹ Disability:IN’s Disability Equality

Index,²⁰ Diversity Lab’s Mansfield Rule Certification,²¹ and an open letter to general counsel and chief compliance officers.²² All of these are public commitments by law firms and companies to do the work and take the necessary steps to create an inclusive workspace for employees with disabilities. Employers can also sponsor disability rights organizations, promote mentor and pipeline opportunities for those considering or entering the profession, host summer internship programs, and celebrate National Disability Awareness Month and National Disability Employment Awareness Month. These activities send a strong supportive message to disabled employees, potential employees, allies, teenagers and young adults that the profession is accessible to them.

Conclusion

The discussion about disability inclusion in the profession is an ongoing one. It is vital that law firms and companies address this issue and ensure that disability inclusion is integrated with their diversity, equity and inclusion initiatives. Such efforts will create inclusive environments in which individuals with disabilities feel comfortable self-identifying and bringing their true, authentic selves to the workplace, as well as ensure that they have a seat at the table. As the 2020 Disability Equality Index concluded, “Being a disability-inclusive employer is good for recruitment, retention, engagement and — ultimately — the bottom line.”²³ **abi**

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The American Bankruptcy Institute is a multi-disciplinary, non-partisan organization devoted to bankruptcy issues. ABI has more than 12,000 members, representing all facets of the insolvency field. For more information, visit abi.org.

¹⁸ “WCAG 2 Overview,” Web Accessibility Initiative, *available at* w3.org/WAI/standards-guidelines/wcag (providing guidance on making web content accessible to people with disabilities).

¹⁹ “Disability Diversity in the Legal Profession: A Pledge for Change,” Commission on Disability Rights, Am. Bar Ass’n, *available at* americanbar.org/content/dam/aba/administrative/commission-disability-rights/pledge-for-change-form.pdf. Law firms, corporations, courts, law schools, bar associations and other legal employers have affirmed their commitments to disability diversity.

²⁰ “CEOs are ‘IN’ for the Disability Equality Index,” Disability:IN, *available at* disabilityin.org/ceos-are-in. CEOs for companies such as Best Buy, Moderna, The Boeing Company and Dick’s Sporting Goods Inc. have committed to building “inclusive, accessible, and equitable workplaces” and were provided tools to analyze and measure their progress.

²¹ “Mansfield Rule Boosting Diversity in Leadership,” Diversity Lab, *available at* diversitylab.com/mansfield-rule-4-0. The Mansfield Rule “measures whether law firms have affirmatively considered at least 30 percent women, lawyers of color, LGBTQ+ lawyers, and lawyers with *disabilities* for leadership and governance roles, equity partner promotions, formal client pitch opportunities, and senior lateral positions.” (Emphasis added.) It has been supported by 118 leading law firms. *Id.*

²² “A Call to Action for General Counsel and Chief Compliance Officers to Commit to Improve Disability Inclusion in Their Law Department,” Elevate, *available at* elevateservices.com/a-call-to-action-for-general-counsel. The open letter asks corporate law departments to “take one concrete action toward improving the inclusion of People with Disabilities in their departments,” with the aim of continuing such progress going forward. It has been signed by counsel for Coca-Cola HBC AG, Unilever, Vanderbilt University and Boise Cascade Company, among others. *Id.*

²³ “2020 Disability Equality Index,” Am. Ass’n of People with Disabilities/Disability:IN, p. 4, *available at* disabilityin.org/wp-content/uploads/2022/05/2020DEIReport508_a11y.pdf.