

# Clients' Diversity Mandates For Law Firms Are Necessary

By **David Hopkins** (May 5, 2022)

The legal community faced a number of tough questions upon learning that Coca-Cola recently scrapped its proposed diversity staffing requirements for outside counsel.

That proposed policy would have expressly required outside law firms to staff at least 30% of new matters with attorneys of diverse backgrounds.

Additionally, that policy would have implemented a nonrefundable retention of 30% on fees for firms that failed to meet these diversity metrics, meaning that failure to comply would result in a tangible and negative economic consequence. The proposed policy met with swift and forceful feedback and threatened litigation from concerned shareholders.



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While it is impossible to discern the true reasons and internal politics that guided Coca-Cola's hand on this issue, it is important to remember the myriad factors supporting these policies and why they are more important now than ever before.

In a political climate that changes by the hour, if not the minute, the legal profession and its clients cannot afford to sacrifice their hard-won gains for the purposes of miniscule, fleeting perceived advantage.

It comes as no surprise to anyone with any experience practicing law that the legal profession is far from diverse. An enterprise originally open exclusively to white men, the legal field has made relatively little advancement in terms of diversity, equity and inclusion, or DEI, in recent years.

As reported in the American Bar Association's 2021 Profile of the Legal Profession, the field is 4.7% Black, approximately the same percentage as measured in 2010.[1] About 4.8% of all lawyers identify as Hispanic and 2.5% of all lawyers identify as Asian.[2] Less than one-half of 1% of all lawyers identify as Native American.[3]

Approximately 3.3% of lawyers openly identify as LGBTQ.[4] Just 0.88% of reported lawyers openly identify as disabled.[5] Only 37% of lawyers identify as women despite women making up more than half of the American population.[6] In stark contrast, 85% of lawyers were non-Hispanic white people as of 2020.

These statistics alone are disheartening to anyone with an interest in DEI in the legal profession. However, this lack of diversity does an active and affirmative disservice to both the legal field and its clients.

With legal matters becoming more sophisticated, nuanced and global than ever before, diversity of perspective has become far more than an aspiration. It is necessary to win cases and negotiate successful deals. Having a variety of viewpoints and outlooks on a litigation team can make the difference between winning a crucial motion and losing it.

Diversity on a deal team is crucial to ensuring successful negotiation and closing of transactions in a global and culturally sensitive business landscape. In an increasingly thorny regulatory landscape, particularly with respect to regulations affecting employment

and staffing, a wide array of backgrounds can inform decisions that make the difference between compliance and severe regulatory penalties.

The benefits of DEI initiatives span far beyond law firms. Large corporations all across the globe have launched similar efforts of their own. They have done so, ostensibly, because they recognize that diversity of talent brings a substantial amount of beneficial change to their internal processes and business objectives generally.

Simply put, increasing diversity in a real and sustainable way is critical to ensuring that companies obtain the best results, promote their values, and continue to advance social interests to the benefit of their shareholders.

This naturally raises the question of the best way to meet these objectives while allowing the legal field and its clients to successfully navigate their many other business and internal concerns.

Anyone with an honest assessment of the legal profession knows that it has failed to achieve lasting change with respect to diversity, particularly in the upper echelon of white-shoe law firms. The numbers detailed above are concrete evidence of that fact. The fact that these numbers have not changed much over the last decade further solidifies this conclusion.

Because large businesses recognized the value of diversity with respect to work on their legal matters, many of the largest clients of America's law firms instituted diversity staffing requirements similar to those that Coca-Cola recently abandoned. Nothing changes the nature of the legal field faster than the demands of its clients.

When clients impose diversity staffing requirements with respect to their outside counsel, law firms have no choice but to increase diversity within their ranks in order to maintain client relationships. This provides lawyers of diverse backgrounds with a previously unavailable opportunity to enter and climb the ladder of elite law firms.

However, given both internal pressures as well as those from small yet vocal groups of shareholders, a number of law firms and companies may be quietly reassessing their commitment to these policies. This is compounded by the politically driven imposition of divisive legislation from state and local governments that results in a legal and regulatory landscape that changes by the day.

In spite of all of this negative pressure, it is of critical importance for law firms and their clients to remember why they devised these policies in the first place: Diversity is good for the bottom line.

This is, of course, not to say that diversity efforts are only justified due to their effects as reflected on profit and loss statements. Nothing could be further from the truth. The moral and societal reasons for continuing to support diversity efforts are more compelling than anything else. But reality is what it is, and green is the color most important to the survival of law firms and their clients.

That said, in a world where the exchange of information is instantaneous and the perception of a company is at times more important than the products it offers, most corporations simply cannot afford to be viewed as being on the wrong side of history. Socially conscious consumption is here to stay, and companies at the vanguard of incorporating responses to this trend have been more successful than ever before.

Simply put, the concepts of DEI are not a fad. Moreover, it is incredibly important to remember why the business world instituted policies to uphold those values in the first place. Every advantage is a potential competitor's disadvantage. Dollars and cents follow conscience now more than ever before.

Policies requiring diverse staffing — particularly with respect to legal matters — are crucial to ensuring that our clients' visions continue to come to pass. The legal profession as a whole as well as the large global client base that it serves should continue to keep this in mind as bigoted political disincentives continue to mount.

Specifically, we as lawyers and businesspeople should continue to remember the concept that guides most, if not all, socially conscious action in the corporate space: There is a strong business case for doing the right thing.

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[1] <https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf>;

[https://www.americanbar.org/groups/young\\_lawyers/projects/men-of-color/lawyer-demographics/#:~:text=Nearly%20all%20people%20of%20color,population%20is%2013.4%25%20African%20American.](https://www.americanbar.org/groups/young_lawyers/projects/men-of-color/lawyer-demographics/#:~:text=Nearly%20all%20people%20of%20color,population%20is%2013.4%25%20African%20American.)

[2] <https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf>

[3] Id.

[4] Id.

[5] Id.

[6] Id.