

The Roadmap to Successful DEI Initiatives in Organizations

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Two Ward and Smith attorneys and Luaskya Nonon, the Deputy General Counsel and DEI Task Force Chair for Toshiba Global Commerce Solutions, shared insights on how organizations can implement Diversity, Equity, and Inclusion (DEI) processes effectively during Ward and

Smith's Employment Law Symposium.

Ken Gray, leader of the firm's labor and employment practice group, and Xavier Lightfoot, an employment attorney, joined Nonon on the dais. Gray advises clients and litigates cases involving all forms of employment discrimination, wrongful discharge, and breach of employment contracts. Lightfoot, who helps employers navigate a wide range of labor and employment law issues, is certified as a Diversity and Inclusion professional and served as the Diversity, Equity, and Inclusion Chair of the North Carolina Society for Human Resource Management in 2021.

Nonon is a Certified Diversity Professional who leads the establishment and implementation of organizational diversity, goals, and strategy.

"In regards to DEI, a lot of people are doing a lot of different things. Some of it is good, and some of it is really bad," laughed Gray. "What we want to do is help folks avoid the really bad stuff."

To initiate the discussion, session presenters asked seminar participants, both in-person and online, to respond to a poll with three questions:

- Does your organization have a defined vision for DEI? (Most are trying)
- Do the leaders in your organization value DEI? (Yes, generally)
- What are some words that you would use to describe the culture within your organization? (Some of the more common responses to the final question were inclusive, struggling, positive and uncomfortable.)

However, before delving into these issues, Lightfoot expressed that it is imperative first to understand why DEI is important.

The Importance of DEI Strategies

One reason why DEI is important is simply that employees demand it. "DEI is not a new concept," said

Lightfoot. "It's been around for quite some time, but due to the racial and social justice movement we saw in the summer of 2020, which was sparked by the deaths of George Floyd, Ahmaud Arbery, and Breonna Taylor, there was a bright light shined on this particular area within most businesses and organizations."

Considering that many social issues are playing out in the workplace, most employees have an expectation there will be a DEI strategy in place. Lightfoot added that another reason why companies should review DEI strategies is that "For years, many minorities have expressed feeling undervalued, unsafe, and unwelcome in the workplace."

In many cases, these feelings have not been expressed due to a fear of reprisal and a degree of skepticism over whether those feelings would actually be addressed. "That's another reason why it's important for all individuals within your workplace to feel included and respected," said Lightfoot.

The Numbers Don't Lie

The research clearly shows that traditionally, minorities have experienced negative outcomes regarding hiring, promotions, and performance evaluations. "The data is out there," noted Lightfoot, "so individuals will frequently remain silent about these types of issues and not bring them forward in organizations where DEI is not a priority."

The numbers show another compelling point in favor of DEI initiatives: namely, that companies with effective DEI initiatives in place create a significant competitive advantage. "It is a factual point that companies that are more diverse and inclusive are more likely to outperform their competitors," explained Lightfoot.

Higher levels of diversity bring different perspectives, and this leads to greater innovation. Also, DEI practices can positively impact recruitment/retention efforts.

Companies should consider a DEI strategy to create a competitive advantage, advised Lightfoot. "Making sure that everyone feels like their contributions are respected and valued is critical," he said.

Putting the Cart Before the Horse

Though many organizations believe in or value DEI, the starting point may be unclear. Figuring out where to start is not as simple as some may think.

"Before investing in DEI, all organizations should assess their corporate policies and people programs to understand what inequities and gaps are present," said Nonon, "so they target their strategies to fill and bridge those gaps."

There is no such thing as a one-off solution for DEI issues. "This process is evolving," noted Nonon. "It requires continuous evaluation and cultural change."

The goal is to change behavior so employees can feel included and that they belong in the workplace. To get there, companies need to build an effective DEI strategy, one that includes three main components.

1.) Review and Audit Internal Processes

The first step is to identify any barriers, inequities, or gaps that exist in the organization for minorities. "This part of the process is very intensive," commented Lightfoot.

Prior to investing in a corporate culture, it's critical to understand the demographics and what are the organization's top values to gain a better understanding of current dynamics. "The objective is to be a place

where everyone feels they can advance and be promoted,” Nonon explained.

Analyzing HR recruiting policies and hiring practices is essential. Companies need to ensure candidate pools are diverse, so the places where candidates are sourced should be reviewed, advised Nonon.

Identifying whether or not bias exists in job descriptions and on interview panels is also an important step in the process. “You need to look at every aspect of your organization,” Nonon said.

2.) Creating a Positive Environment for DEI

The next part of the journey toward building an effective DEI strategy begins with education. People need to understand what diversity, equity, and inclusion actually mean at a foundational level before a change can happen, so any effort should have training as a first step.

During training initiatives, avoiding the use of trigger words is paramount. “You don’t want to use words that are harmful or polarizing because it will alienate employees from participating in the process,” commented Nonon.

All demographics need to understand what their peers experience in the workplace. Whether it’s in a fireside chat, a listening session, a roundtable discussion, or in a CEO meeting, learning more is vital if bridging gaps is the goal.

Understanding what other people go through is the key to getting everyone to pull together on behalf of the organization. The thing to remember, Gray pointed out, is that DEI is a global issue. “This is not just about black and white,” noted Gray. “It’s also about racial and sexual orientation, gender identity, and nationality.”

Making sure that everyone is engaged is essential, and that should include frontline employees. “Diversity, equity, and inclusion get lumped together, but they’re all different things,” noted Lightfoot.

Diversity covers different characteristics of individuals, but inclusion is more about bringing people together from differing backgrounds, experiences, and perspectives to reach a common goal.

3.) Implementing Equitable Systems

The final step in implementing a successful DEI strategy is to ensure that both internal and external systems and processes are equitable. Leaders need to look at every level of the organization through the DEI lens. This would include making sure company products and services are accessible to everyone. It would also include ensuring women and minorities have opportunities to advance within the organization.

To illuminate the nuances associated with implementing a DEI strategy, the panelists described a situation where a fictional company, ABC Company, went wrong with its DEI efforts. After a thorough assessment from the Inclusion Council created by ABC, the conclusion was that ABC failed to meet its diversity targets, specifically within its leadership.

In an effort to combat this failure, the executives decided that ABC will hire more diverse talent for supervisory roles over the next two years. The panelists asked seminar participants to consider whether doing so would be legal. They also asked if it would be permissible for ABC to terminate Marcus, a 45-year-old white male who is underperforming, and replace him with a white female and a black female.

Along with terminating Marcus, ABC terminated seven other white male supervisory employees, citing poor work performance. The terminations occurred within three months of the inclusion council’s report that ABC was failing to meet its diversity targets, and all of the seven former employees were replaced by a woman or

person of color.

Marcus decides to sue ABC Company in federal court, alleging wrongful termination on the basis of his race and sex. “This series of hypotheticals actually flowed from a case here in North Carolina,” said Lightfoot. “The name of the case was Duvall versus Novant Health.”

In the case, Novant’s inclusion council advised the leadership team it had failed to meet its diversity targets. To remedy that, Novant terminated some white male executives and replaced each position with a person of color or a woman. Mr. Duvall successfully argued that his race and sex were the motivating factors in the decision to terminate because he had been performing well, receiving positive evaluations, and meeting most of his targets.

The jury awarded Mr. Duvall \$10 million in punitive damages against Novant Health. “This was a real-world scenario,” concluded Lightfoot, “and it’s a perfect example of how you can have a good initiative and good intentions, but just not implement them in the best way.”

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