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HUMAN RESOURCES ASSOCIATION

JULY 2012

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A MAGAZINE FOR CALIFORNIA HR PROFESSIONALS

INCLUSION—THE REAL DIVERSITY SOLUTION



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IN DIVERSITY MANAGEMENT

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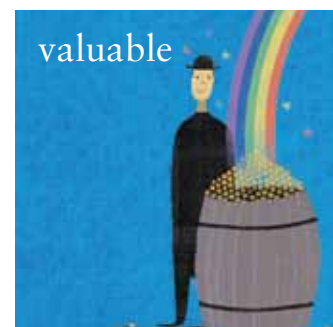
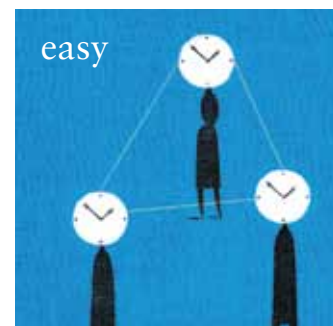
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executive letter

“For me, words are a form of action, capable of influencing change. Their articulation represents a complete, lived experience.”~Ingrid Bengis

The evolution of a profession's vernacular provides fascinating insights into its underlying philosophies. As a recovering English major, I have written often that our shifting focus and value proposition is revealed by our changing terminology. From Industrial Relations, to Personnel, to Human Resources, to Human Capital, to Talent.

The same can be said of the component pieces that comprise our work. Payroll and Health/Welfare became Compensation and Benefits became Total Rewards. Workers, Employees, Associates—Team members. Satisfaction now has much deeper organization implications captured in the nomenclature of Engagement.

This issue of *HR West* deals with perhaps the most meaningful evolution—Diversity has become Inclusion.

Founded in the world of pure compliance and boxes on a government form for all but the most forward-thinking organizations, diversity now represents a business imperative in the purest sense, given that it provides very real competitive advantage.

Director of Global Diversity and Talent Management for Pitney Bowes, T. Hudson Jordan, articulated the difference between diversity and inclusion as follows: “Diversity means all the ways we differ. Some of these differences we are born with and cannot change. Anything that makes us unique is part of this definition of diversity. Inclusion involves bringing together and harnessing these diverse forces and resources, in a way that is beneficial. Inclusion puts the concept and practice of diversity into action by creating an environment of involvement, respect, and connection—where the richness of ideas, backgrounds, and perspectives are harnessed to create business value. Organizations need both diversity and inclusion to be successful.”

Of course, inclusion should rise to the top of an organization's priorities on its own merits given that it is the right thing to do. However, its very real affects to the success of any entity provide the impetus for even reluctant entities to in fact do the right thing.

Our shifting etymology represents a move from the “thing”—diversity—to the desired “outcome”—inclusion. At its core, inclusion is about respect and the recognition that actively leveraging the most fertile area of diversity—diversity of thought—drives success and organizational results. And, of course, it's the right thing to do.

This issue of *HR West* explores diversity and inclusion from a variety of perspectives. As always, it is meant to raise the question and the concept while providing tools to get you started.

It would seem that inclusion was what we were after all along. An organization could be very diverse, but not necessarily inclusive, and the philosophical goals of diversity would not be accomplished. The verbiage has finally caught up with the concept here as it has in so many areas of our work. Each of the examples reflects a shift from the practical and tactical “whats”, to the value to the organization and its members—the real goals.

The evolution is exciting and empowering for HR with long-term implications to our organizational value. I for one am thrilled to be working on talent, rewards, and inclusion—the meta concepts that represent HR strategy. I hope that you are too.

Success on the journey,



Danika Davis, PHR
CEO - NCHRA
415.395.1911 (direct) ■



member profile



Steven Yee, SPHR

Vice-President, HR Operations, HRAnswerLink, Inc.
Member Since 2008

WHAT LED YOU TO HUMAN RESOURCES AS A PROFESSION?

Chemistry—as in college chemistry—a brick wall that became a catalyst. In self-reflection, I re-evaluated my academic major of pre-medicine and a life of working in healthcare. While my personal objective of making an impact in people's lives remained, my path clearly began to change. Recognizing that the majority of our lives are spent at work, I focused on this new awareness. After exploring the field and connecting with practitioners, I realized that HR simply fit my style well. It was all fast-forward from there. I took my first formal steps of HR at a large, well-known organization in the business of healthcare—go figure. So, I found myself impacting the very work lives of those providing care for the health and well being of others in their hands.

IN YOUR OPINION, WHAT IS THE FUTURE OF HR?

The future of HR will continue to entertain familiar and fundamental workplace issues and tasks—even those of the “personnel” days, especially for start-ups and small businesses. That said, regardless of the company size the difference will be HR's ability and agility to address and leverage the increasing speed, broadening scope, and mounting complexities of how such issues will overlap and occur—much of which has been influenced by technology. Interestingly, many start-ups and small businesses are better designed to take advantage of these challenges than their larger counterparts. The strategic needs continue for today's HR to be more social, mobile, and global in order to stay relevant with the next workforce generations and to ensure organizations are always competitively positioned.

WHAT WOULD YOU RECOMMEND TO SOMEONE JUST STARTING OUT IN HR?

Strengthen your skills in strategic competencies, business acumen, consultative skills, technology advocacy, and sound technical HR expertise. Nowadays, with more and more HR functions falling to outsourcing, there is less opportunity for those just starting out to move up the company ladder with on-the-job HR training. Thus an individual's probable first exposure into HR will be with outsourced solution providers, consulting firms, or small businesses. If you want to land a top

HR position, then gaining direct experience in executing HR strategies and projects in alignment with business operations, objectives and opportunities is imperative. All the while, get involved in the HR community and create connections.

WHAT DO YOU FIND IS THE GREATEST REWARD WORKING IN HR?

For me it is the fulfillment of successfully translating HR nuances, technicalities, and strategies into easy-to-understand language for leadership and management—allowing them to make smart decisions with great results. Additionally, our company takes care of about 50,000 business clients nationwide, each with their unique set of needs, preferences, and styles. So, really the greatest reward is experiencing those moments of fulfillment each and every time with each and every client—and doing it together with a great team!

WHAT ROLE HAS NCHRA PLAYED IN YOUR CAREER?

Education and community. The multitude of learning events like the annual HR West conference, have immensely helped me keep in the know, as well as maintain my SPHR certification. The in-person opportunities have especially enriched my networking experience and reinforced valuable relationships. Whether it's the mere access to such an impressive HR collective, the comfort of sound-boarding and swapping stories with peers, the open support to help create professional and business growth opportunities, or the ease of just chatting with the chapter's staff members and volunteer leaders, NCHRA has been a fantastic source for renewed HR vigor. ■

With over fourteen years in HR, Steven is currently Vice-President of HR Operations at HRAnswerLink, a web-based HR consulting firm taking care of small to midsize businesses nationwide. Overseeing the company's HR consulting products and services, he excels in the areas of product development, employee relations, training and education, and organizational strategy. Steven also thrives in his consultative style to help businesses successfully position their HR needs right in line with their strategic goals. Holding a degree in Industrial-Organizational Psychology, he has been certified as an SPHR. In addition, Steven has enjoyed volunteering for and serving in leadership positions for various non-profit organizations.

CONTINUING EDUCATION CALENDAR

JULY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
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30						

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JULY 2012

- 7/10 HR in CA: All About Time Off and Leave of Absence—eProgram Series Begins (Online)
- 7/11 Developing Exceptional Leaders Within Your Organization (Pleasanton)
- 7/11 Interviewing to Hire Right (Santa Clara)
- 7/11 Santa Clara Region Wine Down Wednesdays (networking social, Los Gatos)
- 7/12 HR Metrics Series: Becoming a Strategic HR Department (Sunnyvale)
- 7/12 Peninsula Networking Social (Peninsula Region)
- 7/13 Electronic Filing Requirements: An Informative Presentation by the U.S. DOL (Free Member Webinar)
- 7/17 Congratulations, You are a Manager...Now What? (San Francisco)
- 7/18 Creating a Culture of Innovation (San Francisco)
- 7/19 Retaining the Doers: Key Attrition Interventions (Oakland)
- 7/19 Root Cause Analysis: Find the Right Problems to Solve (Redwood City)

- 7/20 Managing Mental Disabilities in the Workplace (Free Member Webinar)
- 7/23 HR Core: CA Edition—eProgram Series Begins (Online)
- 7/24 Coaching and Developing First-Time Managers (Santa Rosa)
- 7/25 Mastering the Latest in Recruiting: Social Media (Santa Cruz Region)
- 7/26 Talent Management Conference (San Francisco)
- 7/27 Legal Update (Free Member Webinar)

AUGUST 2012

- 8/2 Herding the Cats: Achieve Your Meeting Outcomes (San Francisco)
- 8/2 The New HR: Authentic Leadership (Fairfield)
- 8/7 HR Project Management: A Piece of Cake! (San Francisco)
- 8/8 Mastering the Latest in Recruiting: Social Media (Marin Region)
- 8/13 12-Week PHR/SPHR Certification Preparation Courses Begin (11 locations throughout the Bay Area and online)

8/14	California Essentials: 2-Day Program (San Francisco)	9/11	HR in CA: Advanced Wage and Hour Management (San Francisco)
8/16	The New HR: Authentic Leadership (Sonoma)	9/11	Developing Exceptional Leaders Within Your Organization (Santa Rosa)
8/16	HR in CA: Successful Hiring & Termination Practices—eProgram Begins (Online)	9/12	Creating a Culture of Innovation (Pleasanton)
8/16	Tri-Valley Third Thursday (networking social, Pleasanton)	9/12	Hire Right: Perfecting Your Interviewing Skills (Walnut Creek)
8/17	Preventing Discrimination Lawsuits: Trends and Developments (Free Member Webinar)	9/13	The New HR: Authentic Leadership (Peninsula Region)
8/21	Cultivating Employee Engagement (Sunnyvale)	9/13	Total Rewards Conference: Compensation & Benefits (South San Francisco)
8/21	Designing and Implementing Performance Appraisals (Walnut Creek)	9/14	The Work of Leaders: Realizing Your Full Potential—eProgram Series Begins (Online)
8/22	California's Wage-Hour Laws: Solving the Puzzle (Sacramento)	9/17	HR Core: CA Edition, Part 2—eProgram Series Begins (Online)
8/23	Performance Management: the Key Ingredient in a Total Rewards Strategy (Walnut Creek)	9/18	HR as Architect: Building a Culture of Success and Innovation (San Francisco)
8/29	Generating Entrepreneurial Thinking in the Workplace (San Francisco)	9/19	Cultivating Employee Engagement (Watsonville)
8/29	Developing Exceptional Leaders within Your Organization (Walnut Creek)	9/19	HR Core—eProgram Series Begins (Online)
8/31	Legal Update (Free Member Webinar)	9/19	Retaining the Doers: Key Attrition Interventions (San Francisco)
SEPTEMBER 2012		9/20	Essential Tips for Employee Handbooks (Milpitas)
9/6	HR in CA: Compliant Document Retention (San Francisco)	9/20	Mastering the Latest in Recruiting: Social Media (Oakland)
9/6	Conflict Resolution: Master the “CALM” Approach (San Jose)	9/20	Santa Clara Networking Social (Campbell)
9/7	How to Administer COBRA: An Informative Presentation by the U.S. DOL (Free Member Webinar)	9/25	Coaching Methods that Work (San Francisco)
		9/26	HR in CA: All About Time Off & Leaves of Absence (San Francisco)
		9/28	Legal Update (Free Member Webinar) ■

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THE 10 BIGGEST MISTAKES IN DIVERSITY MANAGEMENT

By Roseanna DeMaria

1. Launching a diversity scorecard that reflects best in class numbers of minorities throughout the firm
2. Regularly reporting the diversity scorecard to the board of directors
3. Featuring diversity in the annual report
4. Actively recruiting and promoting diverse candidates
5. Hiring a world-class diversity thought leader to be your spokesperson
6. Winning awards for best practices in diversity
7. Launching comprehensive diversity compliance training
8. Empowering your legal department to aggressively monitor compliance
9. Giving ownership and reporting responsibility of your diversity team to human resources
10. Creating and funding minority networks

By now you are rereading the list and trying to understand how any of these best practices can be a mistake. After all it took a significant amount of time and research for us to develop these best practices and prove their effectiveness. It took an equally significant amount of hard work and budget to celebrate them as best practices. So how can they possibly be mistakes? Good question. To answer it we need to look at the context for diversity work in the corporate environment.

The belief that every individual should be treated fairly without regard to race, gender, or sexual preference is not an entirely new concept in corporate America. Corporate values and operating principles have historically included “respect” as part of their inventory to promote a healthy culture. Simply put, this value is the quintessential example of the right-thing-to-do. The meaning of that value and its impact is completely dependent on the individual firm’s interpretation and application of “respect” in its culture. Diversity legislation clarified that definition. Diversity took its rightful place in the corporate risk arena because our legislative and regulatory

framework put it there. When discrimination-based class action litigation took center stage on our management landscape, diversity was given a burning platform. Corporations could not afford to ignore or even misunderstand it because of the attendant risks that these cases made quite real.

Every conscientious firm had to aggressively confront diversity as an operational issue. Operational issues need owners who are charged with execution. Their performance must be measured because we all know that if you cannot measure it, you cannot manage it. Like all such issues, stakeholders must be part of the process and part of the solution. The resulting best practices are derivative of this sound and logical approach. Each of the listed best practices can demonstrate how seriously their firm takes its diversity responsibilities. Each practice provides tangible evidence that their firm is committed to addressing the issue. In sum, the firm recognizes the problems of diversity and is executing good faith operational solutions with transparency. While this approach is sound, it is not enough.

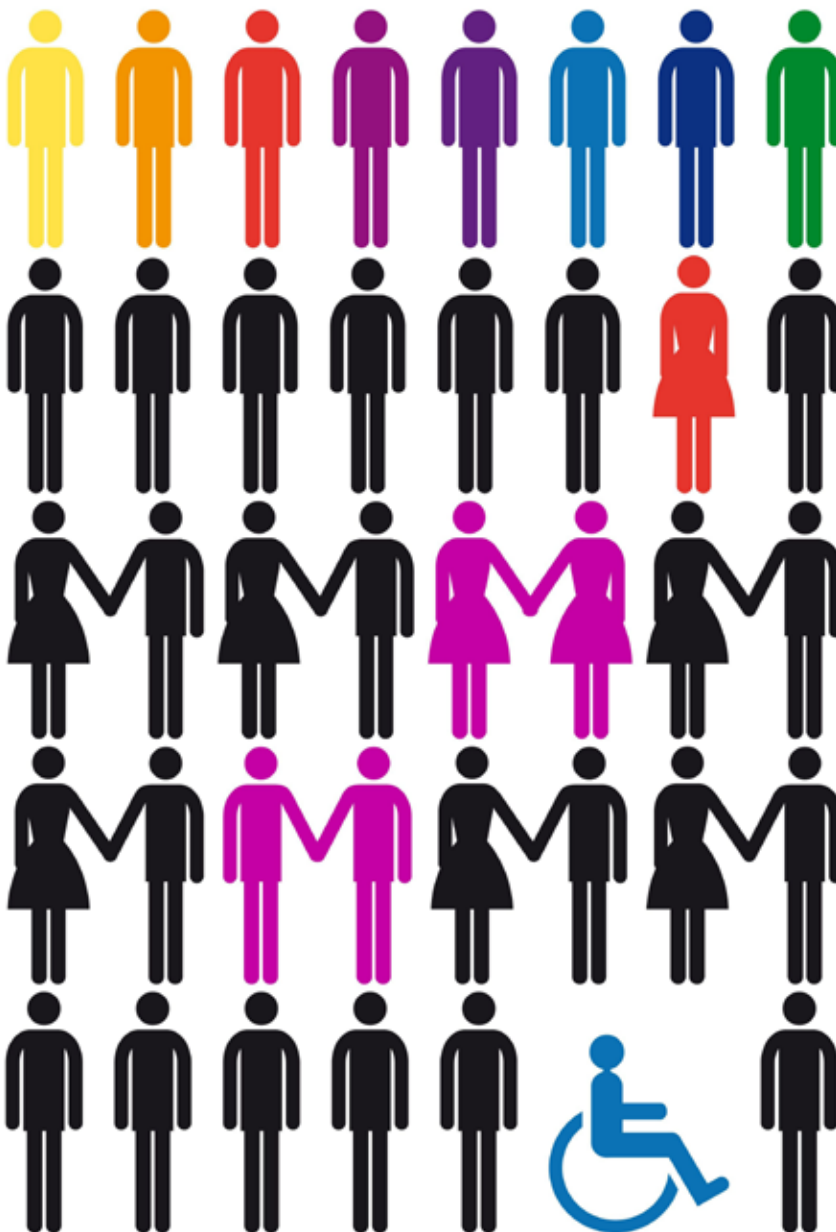
Most importantly, succeeding in these best practices can suggest that the firm's diversity problem is solved when it is not. Diversity ceases to be a problem when minority employees feel included and valued. Inclusion is the ultimate diversity solution. It requires a cultural engine that proactively promotes differences on every level—from race, gender, and sexual preference to style, personality, perspective, and thought process. Inclusion fosters open and candid disagreement and feedback. No viewpoint is marginalized. The power of diversity is unleashed through inclusion because the workplace becomes an incubator for innovation on every level.

A diversity scorecard can reflect specific areas where diversity is lacking. This alerts the firm where to focus its efforts. This is very useful. However, when the scorecard reflects best in class numbers, it does not necessarily mean that minority employees are not being marginalized. Measuring whether minority employees are heard or

valued is not as simple as reflecting their presence. The scorecard numbers can include compensation, promotion trending, and hierarchy that can help get closer to a real answer. Even then measuring whether the minority employee community feels included is problematic. A good scorecard reported to the board of directors and the investor community can provide a false sense of diversity success when minority numbers are good but their voice is marginalized. In that situation the impressive scorecard merely plasters over the problem.

The same analysis applies to recruiting and promoting minority candidates. The hiring of these candidates reflects the firm's commitment to diversity. These candidates like the shareholders and board will find the firm attractive based on its public commitment to diversity in the firm's annual report. Once hired and promoted the real question is whether their contribution is actively sought after in the operation of the business. Do they have the same level of influence as similarly positioned majority candidates? Without a culture that prioritizes inclusion this will not happen and strong hiring and promotion numbers will mask the problem.

A firm whose diversity practices are publicly recognized enjoys a compelling brand enhancement with investors, clients, employees, and business partners. The optics of good diversity practices is powerful with a direct pay back in the marketplace. The firm must live up to its reputation or the brand is at risk. Hiring high profile diversity thought leaders naturally contributes to this enhancement if the firm has an authentically inclusive culture. It is extremely dangerous to hire such talent in a non-inclusive culture because that will render them nothing more than a corporate hood ornament. Their abrupt departure can devastate the brand's credibility. Similarly, winning diversity awards widely enhances the firm's brand, but winning an award does



not guarantee an inclusive workplace. Awards reflect the firm's ability to effectively present its diversity work. Period. The lens of self-perception has a major role in these presentations. There is a limit to what the awarding organization can do to verify inclusion in an organization both because they are a third party and because of the inherent difficulties of measuring inclusion.

Compliance must have a role in diversity management and it makes sense to empower the legal department to monitor compliance. Such training, however, is vital to managing the risk since managers must know what the governing body of rules is to comply. This is no different than any other type of compliance training. An inclusive culture is not borne out of compliance training nor is it taught. Accordingly, creating a diversity team in human resources "outsources" the solution to human resources when inclusion must be infused throughout the fabric of the organization. Inclusion requires firmwide ownership and leadership to succeed. Even the creation of minority employee networks, while well intended, can serve to silo these employee groups if mismanaged. True inclusion demands the richness of the connections and differences across these groups.

These ten best practices are mistakes when they represent the end state of diversity solutions for a firm. They are the natural first step in addressing the diversity problem, but they are only a first step. They create a diverse population. They do not solve the diversity problem. Naturally, recruiting, developing, and retaining them must address the absence of minority employees in a firm and its management. Monitoring this with a scorecard is useful. Creating networks and bringing in thought leaders provides appropriate forums for these minority voices to connect to each other. These solutions become dead ends creating yet another diversity problem of disempowered minority voices if the culture does not prioritize inclusion. Equally significant is the fact that these "solutions" can serve to hide diversity problems. They then become big mistakes because you have a larger, diverse community being marginalized in a firm who markets its diversity prowess.

Meeting the diversity challenge certainly requires the commitment demonstrated by the above practices. To truly succeed in meeting this challenge a firm must create, live and breathe inclusion. Inclusion must be part of the DNA of the culture. This requires leaders who lead, think, create, and value inclusion as part of their execution model. This kind of cultural DNA cannot be bought off a training shelf nor can it be project managed. Inclusion is not simply something one does. That is compliance. Inclusion is something one lives. ■

Roseanna DeMaria is the Chief Learning Officer and Adjunct Associate Professor for NYU SCPS' Leadership & Human Capital Management Department and the Founder of DeMaria Group (<http://demariagroup.com/>). Ms. DeMaria's twenty plus years of business and management experience is broad based, from government to start-ups to Fortune 50 corporations. Roseanna's leadership skills and business results consistently achieved industry and Board recognition and her strategy, innovation, and values-based approach to people development have been studied, imitated, and admired. Her work has been featured in Primetime Live, CNN FN, Fox 5, The New York Times, The Wall Street Journal, and numerous industry publications. She brings this rich body of knowledge and experience to her performance consulting practice to systematically transform organizations, teams, and individuals. High Performance Transformation is her calling card.
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DISCRIMINATION-FREE DOES NOT EQUAL DIVERSE

By Freada Kapor Klein, PhD
and Allison Scott, PhD



INTRODUCTION

"In my international firm, there were people in the office that got the black women confused...One time I was walking down the hall and a mid-manager called out to me, 'Hey Tamika, those documents you wanted, I put them on your desk.' Well that's great, but I'm not Tamika. It's times like that I think about how unsupportive and how uncomfortable the environment can be."

As a human capital professional, how would you respond to an employee who approached you with this concern?

While on the surface, these types of behaviors are often viewed as "minor" and "no big deal," it is critical to understand how slight and subtle biases, omissions, and other micro aggressions can negatively impact diverse talent and inadvertently thwart diversity efforts within an organization. In the ever present talent war and as the U.S. becomes increasingly diverse, human capital professionals can help their employers gain an edge by understanding hidden biases—what they are, how they operate, and how they evolve into hidden barriers impacting organizational diversity and inclusion.

Current advances in neuroscience tell us that as humans, our brains are wired to be biased. That is, on an unconscious level, we file information away with descriptors and engage in pattern recognition and categorization that is determined by our life experiences and cultural background. Decades of empirical research show that despite our best intentions, unconscious and subtle biases affect how resumes, journal articles, theater scripts, interviews, and merit-pay decisions are made. Here are a few examples: Two resumes with identical qualifications are rated much differently based on the perceived race and gender of the applicant. An interviewee with an accent is rated less favorably and less likely to be hired than an identical interviewee without an accent. Women and racial minorities with the same level of performance (and same job, supervisor, work unit) receive lower merit-pay increases than white males. Given that there are significant examples of the impact of subtle, hidden biases on workplace opportunities and experiences of diverse individuals, it is imperative to examine and mitigate hidden biases within our workplaces and ensure that individual biases don't become embedded in organizational practices.



HR Certification Institute ad to come



This article summarizes research findings from a series of studies conducted by the Level Playing Field Institute (<http://lpfi.org/>), documenting the hidden biases and barriers that lead to the disengagement, turnover, and difficulty recruiting and retaining diverse employees.

DISCRIMINATION-FREE DOES NOT EQUAL DIVERSE

Despite significant progress made in the reduction of overt forms of discrimination within the workplace, and the commonly-held perception that we live in a post-racial society where individuals are judged and treated by their merits alone, this does not mean that all individuals have the same experiences and opportunities within workplaces, and it also does not equate to having a “diverse and inclusive” environment.

- While avoiding discrimination and harassment was very important to employers, “creating a diverse work environment” was ranked much lower. Employees believed their employers “should” rank them higher (HOW FAIR, 2003).
- Within IT, women and people of color were far more likely to support diversity on teams and to support company-hiring practices to achieve diversity, than their white and male counterparts. Similarly, people of color were nearly twice as likely as whites to be in favor of a company-wide practice to increase diversity (80% compared to 46%) (Hidden Bias in IT, 2011).
- Even among workplaces that claim to “value” diversity, there still appears to be a major disconnect between

valuing diversity and actively creating diverse environments. While almost 90% of non-profit professionals believed their organization values diversity, more than 70% believed their employer does not do enough to create a diverse and inclusive environment (Diversity in Non-Profits, 2011).

ACROSS NUMEROUS SECTORS, WORK-PLACE EXPERIENCES VARY DIFFERENTLY BY DEMOGRAPHIC GROUPS

Although we share the same work environment, our day-to-day experiences vary widely based on who we are. Research examining experiences of diverse professionals across multiple sectors has demonstrated that subtle forms of exclusionary behavior, unequal opportunities, and mistreatment by race, gender, and sexual orientation continue to be pervasive in workplaces.

- In a large sample of employees across the U.S., employees of color reported experiencing more stereotyping, unwanted jokes and remarks, social exclusion, yelling, unwanted sexual teasing, pressure for dates, and bullying, than their counterparts. Fifty-three percent of employees of color reported having been “stereotyped” at work in the past year (HOW-FAIR, 2003).
- Within a sample of IT professionals, women and people of color encountered negative workplace experiences (e.g., exclusionary cliques, unwanted racial/ethnic/gender jokes, bullying) at rates significantly

higher than their male and white counterparts. People of color reported the highest rates of exclusionary cliques (66%), being mistaken for other individuals of the same race or gender (40%), and unwanted racial/ethnic/religious/cultural jokes (34%) (Hidden Bias in IT, 2011).

HOW DOES WORKPLACE DIVERSITY AND INCLUSION IMPACT RECRUITMENT AND RETENTION?

It is not shocking that there are significant correlations between workplace experiences and job satisfaction/likelihood to leave the company. Given that negative workplace experiences disproportionately impact diverse groups (e.g., women, people of color), it follows that a major deterrent to workplace diversity is the recruitment and retention of diverse talent.

- The vast majority of prospective nonprofit employees of color indicated that they attempt to evaluate the

commitment to diversity of their prospective organization during the interview process (e.g., examining subtle cues, language, actual diversity of an organization's staff). Further, more than one third of the people of color who indicated that they examine diversity during the hiring process reported having declined a job due to a perceived lack of diversity (Diversity in Non-Profits, 2011).

- Employees who experience inappropriate behavior at work and employees who believe that they are treated unfairly are less likely to have positive perceptions of their employer (which includes a willingness-or lack thereof- to recommend their employer to others as a good place to work to others, or to recommend their employer to clients and customers) (HOW FAIR, 2003).
- Respondents who reported a higher number of negative workplace experiences (underrepresented people of color and women) were more likely to report





that we are human with brains that are wired to be biased, we can more easily begin to examine and challenge these biases before they become ingrained barriers. ■

*Freda Kapur Klein, PhD is the founder of the Level Playing Field Institute, which works to increase fairness in education and the workplace by closing the opportunity gap and removing barriers to success. Her book *Giving Notice: Why the Best and the Brightest Leave the Workplace and How You Can Help Them Stay* (Jossey-Bass 2007) combines quantitative*

research on who leaves corporate America and why, with stories of day-to-day experiences detailing the human and financial cost. Freda is also a Venture Partner at Kapur Capital, and a Trustee of the Mitchell Kapur Foundation and the UC Berkeley Foundation.



wanting to leave their company within the next year (Hidden Bias in IT, 2011).

- People of color are three times more likely to cite workplace unfairness as the only reason for leaving their employer than heterosexual Caucasian men. Given that estimates suggest turnover caused by perceived unfairness cost US employers \$64 billion annually, this is a major concern. (Corporate Leavers, 2007).

HOW CAN WORKPLACES MOVE BEYOND “DISCRIMINATION-FREE” WORKPLACES, AND TRULY COMMIT TO DIVERSITY AND INCLUSION?

This research indicates that hidden biases exist in a variety of ways within workplaces and significantly impact recruitment and retention of diverse employees. Human capital professionals can lead the way in incorporating a hidden bias framework into their organizational cultures in order to understand workplace dynamics and increase diversity. This framework allows us to learn about subtle biases and remove them from our hiring practices, performance management systems, and reward structures, while also analyzing subtle behaviors that might exclude particular groups from full participation and opportunities for success. In looking at biases and barriers in a more comprehensive way, we can keep track of our performance and data in a way that ensures disparities are examined and addressed. Ultimately, this framework is unifying rather than divisive, and if we all acknowledge

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*Current research articles include *Dissecting the Data: The STEM Education Opportunity Gap in California*, and *The Voice of Nonprofit Talent: Perceptions of Diversity in the Workplace and The Tilted Playing Field: Examining Hidden Bias in IT Workplaces*.*





THE HARD SELL

MAKING THE LEGAL CASE FOR INCLUSION

By Chako Perez

“We just need everyone on the same train going together in the same direction.” That was how one human resources manager described inclusion to me. As the corporate branch that interacts with employees on a daily basis, human resources sees the benefits of a more engaged workforce and often bears the brunt of the gripes and grumbles where there isn’t one. As an in-house attorney and now as an outside employment attorney, I’ve seen it first hand.

But even with studies citing increased productivity and lower turnover as a result of inclusion efforts, the business response to the prospect of adopting an employee satisfaction plan can sometimes be tepid. Yet, the hard fact is that besides those organizational benefits, workplace inclusion (or lack thereof) can have legal ramifications and resulting effects to the bottom line.

INCLUSION CAN BE YOUR GREATEST DEFENSE

At their heart, anti-discrimination laws are inclusion laws put in place to ensure that historically excluded groups are given fair employment opportunities. Most provide redress with the Equal Employment Opportunity Commission (EEOC) where those opportunities are denied. Yet violations of these laws remain a hotbed as the number of complaints has increased to a record number of charges

filed by employees during the last fiscal year, with racial, sex, and disability discrimination being amongst the highest categories of complaints.

Normally, the EEOC acts as a clearinghouse, investigating these complaints to make a finding on whether there is merit or not. However, in California, plaintiffs don’t have to wait for that investigation. By filing with the California Department of Fair Employment and Housing (DFEH), employees can proceed to court immediately. Adding the fact that there are no damage caps for discrimination or harassment under California state law, it becomes critical for employers to try to avoid these complaints by providing internal means for employees to discuss workplace issues.

Any efforts, ranging from mentoring, team building, increased manager visibility, or open-door policies, can help diffuse disagreements before they become harassment complaints. Even if a complaint is filed with the EEOC/DFEH, these efforts can be used to bolster the legal defense that the company offered multiple avenues to help avoid or solve discrimination/harassment issues early.

A diverse workplace can also be significant as a psychological deterrent, as well as evidence of nondiscriminatory practices. If there is only one or a few minorities in the workplace, any adverse business decision or comment may

be magnified as discriminatory, even when it is not. In this way, the “Law of Large Numbers” applies. If there is only one Hispanic employee and she didn’t receive the promotion but a Caucasian employee did, then, without any other facts, it can appear like discrimination. However, if the company can demonstrate that other Hispanics were promoted or are currently in those same positions, then it is favorable evidence that the company doesn’t discriminate and lends support to the defense that the person was not selected because of some other legitimate reason.

WITH FEDERAL MONEY COMES GREAT POTENTIAL LIABILITY

For companies involved in federal contracting, there is a greater impetus for diversity efforts at all management levels. Companies that

receive more than \$50,000 under a federal contract and have more than fifty employees are required to maintain written affirmative action plans which ensure that certain protected groups are not being negatively affected in hiring, promotions, or terminations. At any time, the US Department of Labor’s Office of Federal Contractor Compliance Programs (OFCCP) can audit the company’s records to assess their compliance, and like the EEOC, the OFCCP has ramped up its enforcement activity.

As part of its obligations, a federal contractor must evaluate its employment practices by comparing the hiring, promotions, and termination rates of minorities versus non-minorities. If it is determined in an OFCCP audit that there is significant disparity in the hiring and/or promotion of these protected groups, it can result in hiring obligations, major fines, payment of lost wages, and even a complete revocation of the federal contract.

Though the focus has historically been on women and racial minorities, the OFCCP is expanding its enforcement efforts to cover veterans and those with disabilities. To help avoid an OFCCP finding of discrimination, a company can demonstrate increased recruitment efforts such as local partnerships, notifying community groups about job openings, or attending career fairs at colleges with high minority populations—activities that work seamlessly as part of overall diversity and inclusion goals.

Moreover, the required pay, hiring, promotions, and termination data and annual affirmative action plan can be requested by a plaintiff’s attorney during the discovery phase of any litigation, making it imperative that companies not only evaluate their practices but also make real efforts to improve diversity at all levels of the workforce.

MISERY LOVES COMPANIES

A recent survey found that contrary to popular belief, employees don’t rank pay at the top of workplace desires. Interesting work, the opportunity to learn new skills, transparent and fair policies, as well as recognition for their work ranked well ahead of higher pay. Efforts to increase communication and employee connections in the workplace helps keep employees engaged and focused. But when employees don’t feel like they have a voice, a union’s promises of an increased role in workplace decisions can seem like a perfect solution.

Because unions thrive on the disenchanted worker,



companies bear the formidable task of both keeping employees happy and unions out. With new National Labor Relations Board (NLRB) union rules changing the landscape against employers, unions are now able to organize a small part of the workforce, for example, a specific division or subset of a department. Rest assured that in selecting where to start, the union will pick the place with the most alienated employees and then leverage it to organize the rest of the company.

In response, the cost to the company to remain union-free can be immense. Not only will the company be forced to spend thousands of dollars on consultants and attorneys to wage its own campaign against the union but also suffer from the decreased production that comes from protests, strikes, sabotage, and strained customer relationships. If enough employees still harbor disapproval for the company, they will vote in the union during the secret ballot election—compelling the union's intervention into almost every management decision for so long as the union is present.

THE HARD SELL

Inclusion is not solely a human resource issue. It involves significant legal concerns and any pitch to management for inclusion efforts should not only cite the organizational benefits, but the hard sell that it can have a very real effect to the bottom line through the expense of fighting unions, lawsuits and government actions. Ask Wal-Mart who has spent ten years defending claims that it discriminated against women in its promotion processes. The company may still prevail in defending the lack of women in higher management positions, but only after spending millions on its defense.

Getting everyone engaged and on the same train can be a monumental task, but the increased insulation that stems

from any effort to increase communications and employee satisfaction can be invaluable both at the water cooler and the courtroom. ■

Chako Perez is an attorney in the Houston office of Alaniz & Schraeder, LLP and helps businesses of all sizes in employment issues ranging from union-organizing to the litigation of wage and hour, discrimination, retaliation, and disability claims. He is also Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization. He can be reached at 281.833.2200 or at cperez@alaniz-schraeder.com.


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new member welcome

NCHRA would like to welcome the following new members who joined in the months of April-May, 2012
As our numbers grow, we become stronger in our ability to support the profession. Thank you and welcome!

Jayanti Anand	Daisy Crawford	Lynnette Hollins
Michelle Angier, SPHR	Natalie Cripe	Steelyn Inoue, SPHR
Shirley Atenta	Joanna Cullom	Kristen Iwata
Stephanie Baltzer, PHR	Brenda Dahl	Richard Jacob
Aderval Barros	Marthe Dalton	Puttanna Jagadish
Kimberly Bass	Anthony Damaschino	Laura Johnston
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Geraldine Bednar, SPHR	Helen Del Grosso, SPHR	Amandeep Kaur
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Theresa Bottenhorn, PHR - CA	Kathleen DuVall	Cecilia Kuewa
Sandi Buchanan, PHR	Salpy Ecityan	Julie Kuzmicky, SPHR
Katherine Burns	Dana Erisman	Nora Lam
Ricalyn Caguiat	Zorha Evans-Huck	Elizabeth Lan
Edia Camara	Katrina Fehring	Gloria Landavazo
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Stephanie Carmona	Junalyn Francisco, PHR - CA	Aniulka Lasurtegui
Erica Caron	Kelli Gaddini	Leslie Leidigh, SPHR - CA
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