

December 13, 2011

NALP-Canadian Section - Diversity Working Group

Feedback on CBA Draft “Measuring Diversity in Law Firms – A Critical Tool for Achieving High Performance”

Our working group consists of NALP-Canadian Section members who are representatives from several firms and law schools across the country. The Diversity Working Group has a mandate of assessing methods for the collection of diversity data by legal employers. As such, we are pleased to provide input to the CBA on the draft Measuring Diversity in Law Firms – A Critical Tool for Achieving High Performance (“the Draft”). We hope that this project will address a critical need for Canadian legal employers.

To begin with the positive, here are the items that we thought were effective:

1. **Appropriate Tone**

The Measuring Diversity Draft is written in an approachable, neutral tone that makes it accessible to all readers. It is not overburdened with jargon. Anecdotes from senior professionals working at large corporations and firms are encouraging and underscore the business rationale for tracking diversity statistics.

2. **Useful Samples**

Concrete advice on pre-testing a proposed survey and samples such as the Communication Plan and Measuring Diversity Culture survey questions are valuable to assist those large firms that are just beginning to develop strategies around diversity issues.

3. **Statistics versus Climate**

The Draft draws an important distinction between measuring the numbers of equity-seeking group members in an organization, and assessing the climate of diversity within an organization. Productivity and retention of employees is highly connected to the satisfaction of those group members and their perception that diversity is embraced rather than seen as a barrier to success.

Our group also noted several items that could be developed more clearly within the Measuring Diversity Draft.

1. Application to small firms

According to the Draft, when utilizing statistics, the employer must be careful to not report responses from groups of 25 members or less, as this could identify those individuals. (pages 10, 20) Responses are considered statistically invalid for groups of 25 or less. In addition, Appendix D mentions that general employee surveys on diversity climate are not appropriate for workplaces with fewer than 150 employees and states that in those smaller workplaces, diversity climate is “best measured by direct measures designed for this purpose”. It is unclear whether the measures following that statement as outlined in the appendix are the “direct measures” which are appropriate for smaller workplaces. More significantly, it speaks to a potentially larger obstacle for application of the Guide; specifically, how useful will the Guide be for small firms that wish to measure diversity? We think the Guide should be clearer and should address this point earlier as to who should be using these methods. Perhaps there could be a separate section particularly for firms of under 40-50 employees to outline appropriate methods?

2. Difference between workplace roles

The draft does not address how the perceptions of satisfaction within equity-seeking groups could vary by their position within the firm. For example, a member of an equity-seeking group who works as a legal assistant may experience the climate of the firm in a different way from a lawyer who belongs to the same group. If the guide is purporting to address diversity within the lawyers of a firm, it may be important to distinguish group responses based on their role within a firm.

3. Reference to Justicia, ITL- University of Toronto, programs for assistance by province and territory

As the Draft focuses specifically on the issues of diversity within law firms, it would be helpful to reference, at least in a minimal way, some of the other initiatives currently being undertaken by other stakeholders. For example in Ontario, the Justicia project is investigating gender-related issues within the legal profession. In addition, the University of Toronto’s Internationally Trained Lawyers program utilizes law firm internships as a way to assist foreign trained lawyers seeking accreditation in Ontario.

Smaller firms committed to increasing diversity may not be aware of the programs currently underway and that they could potentially access.

4. Footnotes required for some findings

Page four of the Draft states that diversity in workplace teams increases productivity by 30%, however, there is no footnote or link to research that supports this conclusion.

Respectfully submitted by:

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