

Corporate Counsel Push Diversity Despite Downturn

By **Jocelyn Allison**

Law360, New York (November 12, 2009) -- As economic concerns threaten to overshadow diversity initiatives in the U.S. legal community, some of the nation's largest corporations are continuing to make the issue a top priority for their outside law firms.

If law firms lose their focus on diversity now, do you know what impact that has on our legal groups?" said Paul Chadha, manager in Accenture LLP's legal group, during a Minority Corporate Counsel Association conference Wednesday in New York.

If this economy changes the way law firms treat diversity issues, in three to five years we're going to have a much harder time finding qualified people to fill our ranks, said Chadha, a panelist at the MCCA's 10th annual Creating Pathways to Diversity Conference.

Corporate counsel have long been a driving factor in BigLaw's approach to diversity, in part because they hire their own attorneys from law firm ranks and want to make sure their legal team is as diverse as the rest of their corporation.

Now, corporate law departments focused on diversity are coming up with new ways to define and track it at their law firms, in addition to focusing on how it can help the bottom line by promoting retention and generating a diversity of views that will garner better outcomes.

If you subscribe to the idea that diversity is only important because it's a moral imperative, you're going to fail, said Tommy Shi, diversity and inclusion officer at Mercedes-Benz USA LLC. Shi spoke at this week's MCCA panel on making the case for diversity.

In addition to connecting diversity with dollar signs, places such as Target Corp., for example, are expanding their notion of what it means to be diverse, including people from different age groups or people with disabilities, according to Joan R. Harris, group manager and senior counsel for employee relations, who also spoke at the conference.

At Wal-Mart Stores Inc., the legal department is in the process of developing outside counsel guidelines on flextime, an option that has historically been geared toward retaining working mothers but also appeals to other attorneys.

As part of a revision of our outside counsel guidelines, we plan to include provisions surrounding flextime demographics within firms as well as the number of flexible arrangement attorneys working on Wal-Mart matters, the company said Thursday.

Exact guidelines are still under development and will be detailed at an appropriate time," Wal-Mart said in a statement for Law360.

The focus on flextime is welcome news for people who work on promoting women in the legal profession, and could prompt similar action from other major corporate law departments that have traditionally taken a leading role in pushing diversity, industry experts said.

Because women are such a big part of the diversity discussion and work-life balance is such an impediment that so many women face, it's really remiss to focus on diversity and not make work-life balance integral to that discussion, said Deborah Epstein Henry, founder and president of Flex-Time Lawyers LLC.

DuPont Co. also tracks the diversity performance of its outside firms, tallying the number of "diverse" attorneys who make up the partner and associate ranks and the number of hours those attorneys work on a given matter, among other metrics.

Andrew Schaeffer, DuPont's managing partner for operations and partnering, said the legal department encouraged its primary law firms to look at issues related to work-life balance, but did not make it a requirement.

We will probably start to ask questions about work-life and flextime, Schaeffer said. " I don't know how far we'll want to go, but we'll want to know if they have a policy about that, and we'll also want to ask if they have a chief diversity officer."

Not that saying no is a bad thing, he added, but it might get the law firms thinking that they should have those things.

In addition to tracking diversity in its law firm network, DuPont makes sure to give work to women- and minority-owned law firms, and requires its primary firms to seek out such firms when using local counsel or co-counsel, Schaeffer said.

The emphasis on diversity at DuPont comes in part from the company's science focus and its history of seeking out the best minds in research and development from all over the world, Schaeffer said.

Having a diverse legal team was a natural extension of that, and it is connected with results, he said.

You have to have firms that are not only representing you and your principals, but they also have to essentially meet the makeup of the community that you're litigating these cases in," Schaeffer said.

If you've got diverse judges and jurors and so forth, and they see a legal team that is showing up and they're not diverse at all, you're at a disadvantage," he said. " You're not speaking to them in the way you should. You're not really representing yourself in that community."

With budgets tight at both law firms and law departments, the pressure is on to cut back on diversity initiatives or to consider it merely " nice to have" in outside counsel when the immediate goal is to obtain quality legal service at a reasonable cost, experts said..

There are also questions about whether it's the law department's place to dictate policy at outside law firms, be it the diversity of the firms' employees or other policies such as those regarding pro bono work or environmentally friendly initiatives.

At Ericsson Inc., the legal department promotes diversity within its own ranks but doesn't make it a requirement of their law firms, though it would if the company's leadership required it, said Frank Vecella, associate general counsel for litigation.

Otherwise, just because I happen to think those are laudable goals for a law firm to strive for, I don't think it would be fair to my employer to emphasize those factors at the expense of things I think are more important to the company, which are having the very best representation or not having to pay more for it than necessary," Vecella said.

I think I'd be doing my employer a disservice by putting those factors above those other things," he said.

Despite the immediate economic pressures, diversity advocates say you can have both, and that developing a diverse legal team will generate diverse perspectives that will improve the overall quality of legal services in the long-run.

The reality is that if you have a bunch of people with the same background, same education, same perspective, you're not going to get the best possible outcomes in the long run; that's the value of diversity, said Robert Kirtley, a managing director and head of the legal management consulting practice at Duff & Phelps Corp.

You're not trying to achieve this on a single case, Kirtley said. " If you want to be successful in a diversity program, it's a long-term thing. This is something that takes a cultural shift in the law department, it takes a cultural shift in the law firm, to create an environment where a diverse population is successful and where people want to stay."

If corporations are interested in pushing diversity at their law firms, now is the time, when competition for clients' legal work is steep, Henry said.

It's also a good time to look at how diversity policies can help the bottom line, such as saving money on ramp-up time and training by promoting retention, she said.

I really believe that law departments should be focused on this right now more than ever, and I think apropos of that, law departments are really recognizing the need to pay attention to law firm profitability right now, Henry said.

I think where the shift happens is where the legal departments recognize that there are significant economic and noneconomic costs that result when an in-house legal department doesn't get involved in how their work is being handled," she said.