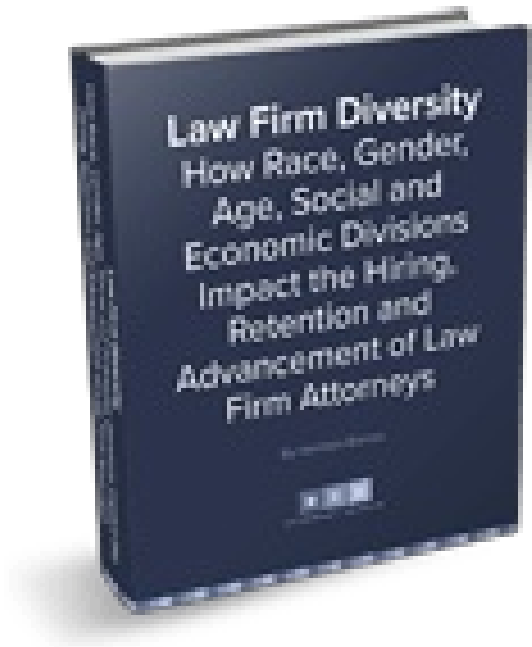


## Chapter 6: Hiring Practices Remain Tense with Diversity Efforts

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We can generalize that most law firms operate under a conservative ethic that preserves tradition, respects authority, and is built on hierarchy. Introducing diversity to the mix asks firms to step away from their past conditioning in predicting which kinds of attorneys help them succeed. No longer can partners or recruiting coordinators rely only on extrinsic characteristics to forecast whether a person has the ability and fortitude to succeed in the legal profession. Instead, who attorneys are on the inside--where they come from and what they had to overcome, their creativity, their resilience, their commitment and focus--is what counts.

Yet even the most progressive firms exhibit trends in hiring related to diversity. Law firms' hiring of diverse attorneys follows patterns according to whether the new hire is an entry-level attorney, a lateral associate, or a lateral partner. On the whole, as mentioned above, firms do better in meeting diversity objectives with entry-level hires, who are lower on the social hierarchy in firms, than with any type of lateral hire.

### Entry-Level Hiring

Comparatively, it is easier for diverse attorneys to get hired at the entry level than at the lateral level.<sup>[1]</sup> In my experience, law firms hiring at the lateral level, and especially at the partner level, are little concerned about diversity. There are various reasons why firms are more likely to hire diverse candidates at the entry level.

There are more people involved in entry-level hiring. Entry-level attorneys typically are hired to work in the firm generally, not to work for one specific partner or attorney. Later, when attorneys become established in a firm, then they are tracked toward specific senior attorneys.

Entry-level attorneys are interviewed by a mix of associates, partners, and others--all of whom weigh in on whether to hire the person, so homophily comes into play to a much lower degree in the interviewing process. It is less about one person liking the attorney and more about the firm deciding whether the attorney is qualified. Also, the law firm's hiring and management committees can consider the importance of diversity and other factors that affect the firm's reputation in the legal community when making hiring decisions.

	Partners			Associates			Total Lawyers			Summer Associates		
	% Women	% Minority	% Minority Women	% Women	% Minority	% Minority Women	% Women	% Minority	% Minority Women	% Women	% Minority	% Minority Women
2009	19.21	6.05	1.88	45.66	19.67	11.02	32.97	12.59	6.33	46.62	24.04	12.90
2010	19.43	6.16	1.95	45.41	19.53	10.90	32.69	12.40	6.20	47.35	26.99	14.92
2011	19.54	6.56	2.04	45.35	19.90	10.96	32.61	12.70	6.23	47.71	27.11	15.19
2012	19.91	6.71	2.16	45.05	20.32	11.08	32.67	12.91	6.32	46.26	29.55	16.26
2013	20.22	7.10	2.26	44.79	20.93	11.29	32.78	13.36	6.49	45.32	29.51	15.78
2014	21.05	7.33	2.45	44.94	21.63	11.51	33.48	13.83	6.74	46.33	30.27	16.63
2015	21.46	7.52	2.55	44.68	22.00	11.78	33.38	13.97	6.81	47.78	31.16	16.99
2016	22.13	8.05	2.76	45.00	22.72	12.42	33.89	14.62	7.23	48.71	32.33	18.05

Table 6.1 Women and Minorities at Law Firms, 2009-2016. *Source:* The NALP Directory of Legal Employers

A close watch is kept on law firm hiring. The National Association for Law Placement (NALP), law schools, attorneys, and potential summer associates, among others, closely watch law firm hiring practices at the entry level. NALP, an influential professional association that advises legal professionals, from law students and attorneys to law firms and law schools, champions diversity and inclusion. It operates under the beliefs that "all law students and lawyers should benefit from a fair and ethical hiring process . . . [and] a diverse and inclusive legal profession best serves clients and our communities." It serves its members by collecting and publishing legal employment data.<sup>[2]</sup> (See Table 6.1.)

Firms are under pressure to appear diverse by hiring a diverse class of summer associates. Law firms that do not put together a diverse class of summer associates can come off as being discriminatory in their hiring practices, whether that is true or not. Law firms seek to hire diverse attorneys at the entry level because they know NALP is tracking these hires and they want to present the best possible face to the public.

Even though entry-level hires are unproven commodities, a firm's investment in them is comparatively minimal. If the attorney does not do good work, the law firm can write off many of his or her hours. [The firm can also give the attorney busywork to do until the attorney leaves.](#) Major national law firms often have large institutional clients with ongoing unsophisticated work (document reviews, due diligence, discovery) that low-skilled entry-level attorneys can do without too much risk to the law firm.

The law firm can send a message--directly or indirectly--to an entry-level attorney who is not a good fit that it makes sense for the attorney to move on, and the attorney often is able to find a new job quickly.

Clients may give law firms marching orders to assemble diverse teams to work on their matters. Partners consider hiring diverse teams when they have a large case or matter to be staffed, and diversity requirements can be met with diverse entry-level attorneys, who are relatively low-risk hires. Placing entry-level attorneys on low-risk matters is not likely to hurt a firm's business substantially.<sup>[3]</sup> However, the most powerful partners representing the largest companies may not be willing to change their hiring criteria to be more inclusive of diverse employees despite their marching orders for diversity.

## Lateral Hiring

At the lateral level, more than at the entry level, law firms operate like meritocracies, where talented people are chosen to move ahead based on their ability. Law firms are open to including diverse attorneys at the lateral level, but they do not change their hiring qualifications out of diversity concerns:

At the lateral *associate* level, almost all law firms hire based on the attorney's qualifications: education (the quality of the attorney's academics and law school); strength of current employer (the quality of the law firm the attorney is coming from); practice area (the type of work the attorney is doing and the law firm's need for that specialization); presumed commitment to the type of work the attorney is interviewing for (whether the law firm believes the attorney will stick around); presumed fit with the culture of the firm; and diversity of the attorney.

At the lateral *partner* level, most law firms hire based on the amount of business an attorney brings. I have seen only a few rare instances when law firms have hired a partner for diversity reasons--law firms simply do not hire partners who do not have substantial business (unless the partner's business is in a very niche practice area that the firm cannot service on its own).<sup>[4]</sup>

As in society, the further up the social hierarchy you go, the less diversity you find, partly as a result of higher-status partners perpetuating a system of hiring that started out not including diverse attorneys.

Most large law firms know that their hires are likely to stay only for the short term. Associates are short-term "investments" because they are likely to leave (or be asked to leave); very few stick around to become partners. Partners are guilty of "short termism," too, because they stay with a law firm only as long as they are paid what they want, are happy, and the firm recruits the best talent for them to work on their matters.

Usually, law firms hire lateral associates to work with a specific attorney in the law firm. This attorney (generally, a partner) simply hires the person with the best qualifications and with whom the partner is most comfortable. The law firm cannot influence the hiring attorney to hire one candidate over another on the basis of diversity because the law firm's role is to provide a service to the hiring attorney, who needs work done. Unless the hiring attorney is being pressured by clients to hire for diversity, it is unlikely diversity will factor much into the hiring decision--other than where diversity intersects with homophily and hierarchy, which usually results in a hiring process that overlooks or dismisses diverse candidates on the basis of various misperceptions. (See "Preconceptions about Diverse Attorneys" later in this book.)

Large law firms are often made up of hundreds of small businesses, with each partner's business contributing to the whole. Partners can get up and go anywhere at any time. A fluid lateral market means that law firms must hold on to their business generators and the attorneys who bring in business.<sup>[5]</sup> Firms are not interested in undertaking initiatives that can potentially dilute profits or displease partners and make them go away. Likewise, business generators have no incentive to build for the future of the firm because they are motivated by their individual needs rather than by societal concerns about increasing diversity.<sup>[6]</sup> This is not to say that law firms and partners do not share the interest in diversity of their clients and society but that they are more motivated by their business interests (money) than by the common good.<sup>[7]</sup>

Because of the short-term-thinking, dog-eat-dog world of the law firm, calculations about diversity often do not factor into lateral hiring decisions. Whereas Human Resources can ensure a steady inflow of diverse attorneys at the entry level, it is much more difficult at the lateral level, where individual partners do so much hiring and have so many preconceptions about what they want and do not want.<sup>[8]</sup>

The following subsections discuss why law firms are less likely to hire diverse candidates as the lateral level.

## Attrition

A substantial portion of attorneys enter law firms and find that law firm life is not for them.<sup>[9]</sup> Attrition is a major issue with all attorneys--regardless of diversity--but retention issues are exacerbated for diverse attorneys,

and thus law firms assume a greater risk hiring them at the lateral level.

Work in a law firm can be extremely difficult. According to one attorney:

I lasted five years, and once my student loans were paid off, I got the hell out. It was demoralizing, working like a dog doing mundane work and my vitality was slipping day by day. The hours and stress were killing me.

I got into the office at 8:00 am and left at 10:00 pm every day, plus I would also work one day on the weekends. I would work about 70-80 hours a week. The stress was unbelievable, especially coming from senior associates and partners in the firm. Everyone was biting each other heads off to get ahead. The senior associates viewed you as competition to become a partner and they would treat new associates like slave labor.

[Before I joined] my law firm showed us brochures with smiling associates, promised us interesting work, and the infamous "work life balance" bullshit. It was shocking because you are their slave and then they send you back to your old law school to recruit new people.<sup>[10]</sup>

### Potential for Dead Weight

Law firms are afraid of hiring unproductive or untalented associates who may not work out. At the entry level, associates are put on assignments that are less consequential, and the law firm can write off the hours of entry-level associates who do not do good work. If they are asked to leave a firm, entry-level associates typically have other job options.

After a year or two, attorneys are expected to be more efficient. At this point, law firms are exposed to serious risks if the attorney does not do good work. The firm can lose the money, time, and resources it expended to train the new hire, can face a lawsuit, or can expend further resources if the attorney stays longer than the firm wants.

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