

# Beyond tokenism: pursuing policy-driven DEI every day of the year

International Women's Day will prompt an uptick in marketing campaigns, but increased public scrutiny means potential damage to brand and reputational risk

By **Kate Broer** and **John Koski**

**C**ompanies are more likely than ever to be called out over grandstanding around tokenism and equality. As ever, International Women's Day will prompt an uptick in marketing campaigns, with clients examining the diversity, equality and inclusion (DEI) landscape of their law firms.

We can expect all manner of organisations to pump our LinkedIn feeds with bite-sized servings of female-focused content, allowing marketers to utilise every trendy promotional tool for the plight of women.

But women still face inequality and professional penalties for advocacy. It is time for the industry to revisit its policy-making and governance through a DEI lens, and create grassroots change for the long term.

Awareness movements have an important role to play, yet in recent times, many have only served to highlight how tokenistic and superficial diversification policies can be. Too many make awareness days the focal point of their inclusion efforts. What about the other 364 days in a year?

Appropriately, marketers and leaders whose contributions on this topic are limited to ticking boxes are finding themselves subject to increased public scrutiny around their firms' actual track records. Thanks to increased transparency, a more open atmosphere of conversation, and social media, people can comment directly, publicly, in real time and all the time on these matters. A firm's attempts to market its supposed elevation of women can quickly be derailed anyone with a platform who looks at the gender balance of its staff. Some recent high-profile callouts are raising fear of reputational risk and effectively watering down awareness day fervour.

Tokenism and lip service around women are causing more than just branding problems for law firms. Women are exiting Big Law at the same time that gender diversity is becoming more important to how we do our work. In a recent survey of women leaving US law firms, "gender biases, micro-aggressions, billable hour target pressure, preservation of mental health, lack of mentorship, unequal pay, as well as isolation, long hours and unpredictable schedules, lacklustre career trajectory prospects and insufficient work-life balance" were cited as reasons for this trend.

Across corporate industries at large, an increasing number of senior-level women are quitting, leaving a huge gap in gender diversity at the C-suite level. There's also the fact that, compared to men in similar positions, female managers spend more time on work that promotes employee well-being and fosters diversity, equity and inclusion. According to the Lean In 2022 Women in the Workplace report, 40% of women leaders say their DEI work is not acknowledged at all in performance reviews.

Allyship and leadership advocacy are vital for advancing a fairer and more successful workplace. To make them feel proactive on DEI, firms often task members of marginalised groups (not just women) with solving their own oppression. Affinity groups and awareness day activations led solely by those affected is another form of DEI tokenism. Research shows that in addition to the "emotional tax" of being "the face" of the cause, women pay a professional penalty for taking on this kind of work, receiving lower competency and performance ratings than their male counterparts.

Men need to be active in raising awareness and advocating for equality. If they do not show up, the work of the group can be for naught.

Navigating how International Women's Day marketing activations will land with audiences is fraught with tension in the contemporary social environment. Far too often, firms are predisposed to simply assign awareness days to their HR, Marketing or Communications teams. Instead they should consider their organisation as a whole, and how a law firm can be inclusive by design throughout the year.

What is it about the system that does not allow enough women to reach the highest echelons of leadership and the most interesting and lucrative client opportunities? To avoid box-ticking tokenism, law firms need to commit to honesty. Traditionally the value markers of a lawyer are transactional – billable hours, charges rendered, bringing in new business. Historically (and, sadly, currently), men tend to be less encumbered by the daily responsibilities of caring for children, the home and other commitments outside the office. Within firms, men also often have fewer responsibilities which are crucial to its success but go unrecognised and unrewarded.

The value of workers who can effectively deliver what a client needs, provide holistic and practical advice, collaborate with colleagues, motivate a team and maximise its potential cannot be quantified via traditional metrics, and so thus skills risk being overlooked. Women are often empathetic and collaborative leaders, mentoring the next generation of the organisation and investing in the day-to-day management of client relationships. But prioritizing such work can hamper transactional metrics, creating an earning disadvantage and an inevitable ceiling on growth. Law firms must recognise that profitability and service go beyond pumping out billable hours. Adjusting a firm's perception to value its people for who they are and their broad contributions to the well-being of the organisation is key to the case for inclusion.

Clients are also increasingly demanding that firms demonstrate a commitment to diversity and inclusion, and that it be seen both at the leadership level and in client service teams. They're also asking firms to provide diversity statistics as a condition of engagement. This is because diversity of backgrounds, race, ethnicity, gender identity, sexual orientation, ability and age makes for a greater richness of opinions, perspectives and approaches, all of which enhance the quality of counsel.

According to Diversity Lab, 30% critical mass is required to disrupt biases embedded in promotion and hiring processes. This has prompted firms in Canada, the US and the UK to adhere to the Mansfield Rule. Proven to move the diversity needle, it stipulates at least 30% representation of historically

under-represented groups in both leadership ranks and candidate pools. This kind of commitment to change is a promising start for firms actively engaged in challenging and changing outdated processes.

Applying strong DEI policy to daily operations does more than give the impression of change; it declares a transparent dedication to delivering on equality in the long term. Effectively engaging leaders on this issue requires a commitment to enhanced policy and governance measures. For example:

- Greater accountability and performance metrics for leaders on key DEI indicators, both qualitative and quantitative
- Robust requirements for diversity of representation in client teams, after accounting for the expertise required at all levels of seniority
- Ensuring team members from under-represented groups be given the opportunity to participate in meaningful client work aligned with their expertise
- Mandated diversity in candidate pools for hiring processes and leadership roles

Without a baseline approach to DEI policy, law firms will struggle to recruit and keep talent. Members of the firm appreciate policy-level commitments, and will then naturally drive positive behaviours themselves. The International Bar Association calls robust DEI policy a "North Star for business", as mounting studies confirm that firms which implement it into the DNA of their business will not only cement their global brand image, but also "strengthen their license to operate".

Diversity policy is not without tokenism traps. Diversity without inclusion is tokenism itself. Genuine change in values and attitudes come from following through on commitments to mirror society. Firms should do this not just to win proposals, but to have people from a variety of backgrounds collaborate to do interesting work. Law.com International's investigation documents how Black or minority ethnic lawyers in the UK are being side-lined on client work for which their names and faces had been used in pitch materials. In response, I. Stephanie Boyce, president of

the Law Society of England & Wales, commented: "In-house teams don't want to just see a few more diverse faces in the bidding stages, they want to know that those from diverse backgrounds are gaining opportunities to work on interesting and challenging cases, which means firms should be proactively seeking and progressing diverse talent and allocating work fairly."

Even in 2023, International Women's Day needs the spotlight, as do all awareness days. They provide a platform for lived experiences from all groups in society, and for the rest of us to show appreciation for their enormous contributions to our collective success and well-being. But championing women is not a tick-box exercise, but rather something law firms should have on the agenda every day.

Firms can guard against accusations of tokenism by acknowledging that most goals are long-term and aspirational, but that they can start mandating that progress and policy be part of their operations today. It begins with identifying the barriers and systematically working to correct them. From the McKinsey 2022 Women in the Workplace report: "Women are ambitious and hardworking. They're more inclusive and empathetic leaders. And they want to work for companies that are prioritizing the cultural changes that are improving work. Companies that rise to the moment will attract and retain the women leaders—which will lead to a better workplace for everyone."

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