

IILP SAMPLE KEY PERFORMANCE INDICATORS FOR LAW DEPARTMENTS*

Part I: For Organizations and Departments in the US

Just as with individuals, organizations learn, grow, and evolve in their understanding about and appreciation for the value of diversity, equity, and inclusion (“DEI”). In organizations like corporate in-house law departments, the value placed upon DEI can be compounded by internal corporate values and goals coupled with external demands by bar associations, outside counsel, and the law departments of other corporations. With that in mind, the Institute for Inclusion in the Legal Profession has developed these sample Key Performance Indicators (“KPIs”) targeting three levels of DEI efforts: 1) new to, or restarting, DEI efforts; 2) some existing DEI efforts; or 3) in the forefront of DEI efforts. Certainly, there will be some corporate law departments that fall between or straddle two, or even all three, levels. The intent behind these three lists is to provide a working list for corporate in-house law departments to gauge their own DEI progress, suggest ideas for advancing DEI that corporate in-house law departments may not have considered, and highlight some of the most advanced efforts and strategies that some law departments are already utilizing.

A. Background

There is quite a bit being written about DEI policies, practices, and strategies. These KPIs were developed solely with the legal profession generally, and corporate in-house lawyers and law departments specifically, in mind because the legal profession is different from standard business organizations. This adds a level of complexity to DEI efforts within corporate in-house practice because it is frequently trying to balance between those strategies, policies, and practices designed by HR or diversity professionals for a more general business and those intended for law firms; both may overlap with the corporate law department yet are distinctly different. Therefore, we want to clarify a few points at the outset:

1) Metrics and Data

For DEI efforts in the legal profession, metrics and data analytics are important. We understand that some HR professionals and DEI leaders in corporate settings may feel that an emphasis on metrics detracts from emphasizing an inclusive culture. In other words, if you take care of the inclusive culture, the (increasing) diversity metrics will follow. The legal profession, however, remains one of the least diverse professions in the US. Implementing an inclusive culture without a critical mass of diverse individuals at all levels will either undermine the inclusivity of that culture or be inclusive but only for those diversity demographics already well-represented. Therefore, we continue to encourage data collection as a tool in the legal profession’s DEI efforts as they remain an important starting point for meaningful DEI efforts in the legal profession.

2) Order of Emphasis

DEI in the legal profession is evolving, including the language and terms of art being used. Prior to 2020, D&I (diversity and inclusion) was commonly used. During 2020, when more people began to recognize and understand the existence of racial disparities and the legal profession had a heightened sense of social justice issues, equity (as opposed to equality) became more readily accepted as part of the profession’s lexicon and DEI (diversity, equity, and inclusion) became the more common parlance. In many corporations I&D is the preferred term, inclusion being considered a more important goal than diversity. In other parts of the legal profession, there is preference for DEI, with the notion that diversity will lead to equity, which in turn will lead to inclusion, the ultimate goal. We choose to use DEI because we think it is important to acknowledge the value of equity in any effort to achieve inclusion. For those who disagree, they may certainly edit these KPIs to reflect their preference. It is another example of diversity within diversity.

*These KPIs were originally published as part of IILP’s report, *DIVERSE OUTSIDE COUNSEL: Who’s Getting the Business?* Download the full report at www.TheIILP.com

3) Terminology and Definitions:

For the purposes of these key performance indicators (“KPIs”), when the following terms are used, we mean:

- “Racial/ethnic minorities” refers to those who are:
 - African, African American, Black, or Caribbean;
 - American Indian, Native American, Indigenous Peoples, or First Nations;
 - Asian, Asian American, Asian Pacific American, or Asian American Pacific Islander (including Pacific Islander, South Asian, or South Asian American);
 - Hispanic, Latino/a/x, or Latin American; or,
 - Any combination of the above.
- “African American” includes those who are African, Black, or Caribbean.
- “Native American” includes those who are American Indian, Indigenous Peoples, or First Nations.
- “Asian American” includes those who are Asian, Asian Pacific, Asian Pacific American, Pacific Islander, South Asian, South Asian American, Southeast Asian, or Southeast Asian American. It includes those who identify their ethnicity as any of the following: Chinese, Japanese, Korean, Filipino, Thai, Indian, Pakistani, Bangladeshi, Vietnamese, Burmese, Singaporean, Laotian, Hmong, or Taiwanese.
- “Hispanic” includes those who are Latino/a/x or Chicano or Latin American.
- “White” includes those who are Caucasian, European, or European American.
- “LGBTQ+” refers to lesbian, gay, bisexual, or transgender people, or, anyone whose sexual orientation or gender identity does not conform to herterosexism, heteronarmativeness, or cisgender.
- “Non-Judeo-Christian religions” includes but is not limited to:
 - Buddhism
 - Confucianism
 - Hinduism
 - Islam
 - Shinto
- “DEI” refers to diversity, equity, and inclusion
- “Disabilities” refers to anyone who is considered to have disabilities as defined by the Americans with Disabilities Act.

“Accommodation” refers to technology, physical premises, furnishings, or allocations of time not typically provided but necessary to religious observations or to address disability needs.

B. Corporate Law Departments New to, or Restarting, DEI Efforts

<p>1. DEI Value Statement</p>	<p>1.1. Ties into company values. 1.2. Includes short-term and long-term goals. 1.3. Includes internal and external goals.</p>
<p>2. Goals and Objectives</p>	<p>2.1 Three to five internal goals 2.2 Three to five external goals.</p>
<p>3. Annual Department Assessment</p>	<p>3.1. How many women, men, racial/ethnic minorities, and individuals who are openly LGBTQ+ have visible disabilities, and/or require accommodation for a disability or religious reasons are in the law department? 3.2. How diverse is each position level within the law department? 3.3. How diverse is each division, department, section and/or practice area? 3.4. How does the data collected for 3.1., 3.2., and 3.3. reflect individuals who may identify with two or more types of diversity, using KPI Chart A or something similar? 3.5. What is the retention rate for each group? 3.6. What are the hiring and promotion rates for each group identified in 3.1.? 3.7. Do employees perceive the department/organization to be inclusive?</p>
<p>4. Budget</p>	<p>4.1 To educate and train employees about DEI generally and in the legal profession specifically. 4.2 To fund lawyers who wish to attend and participate in the programs, activities, or leadership of DEI bar associations or other organizations.</p>
<p>5. DEI Committee</p>	<p>5.1. Regularly scheduled (at least quarterly) meetings. 5.2. Regularly scheduled programs for the entire law department and others.</p>
<p>6. Performance Reviews</p>	<p>6.1 Emphasize competencies and skills, not subjective comments.¹ 6.2 Include DEI activities, involvement, and leadership efforts. 6.3 Include a DEI component to the annual “stretch” goals.</p>
<p>7. Hiring and Promotion Procedures</p>	<p>A standard such as the “Rooney Rule” in professional football or the “Mansfield Rule” to ensure that diverse candidates are among those considered for any position or promotion.</p>
<p>8. Visibility/ Exposure</p>	<p>Publicizing and promoting DEI efforts, achievements, and successes of the law department, as well as individuals within the law department.</p>
<p>9. Staffing</p>	<p>9.1. DEI Committee Chairs: Lead day-to-day DEI efforts. 9.2. DEI Corporate Sponsor: Oversee, implement, and resource DEI efforts. 9.3. DEI Professional Staff: Perform day-to-day work, such as comparing annual assessment to historical trends; reviewing all performance reviews for potential bias and looking for trends among supervisors; tracking implementation of “Rooney Rule” and/or “Mansfield Rule.”</p>

10. Supplier Diversity Program	<p>10.1. Minimum of 1% of the company legal spend is with diverse-owned law firms in which the majority ownership is by women, racial/ethnic minorities, lawyers who are openly LGBTQ+ and/or lawyers who have disabilities.</p> <p>10.2. Annual measurement and reporting.</p> <p>10.3. Department-wide metrics that combine aspects of law department operations with diversity metrics that will allow comparisons that over time will clarify the validity of commonly held assumptions. <i>E.g.</i>, Is the amount of time that new diverse outside counsel bill to a project significantly more expensive than the amount of time established outside counsel who are not diverse would bill when billing rates and in-house supervisory time are factored into the assessment?</p>
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11. Annual Outside Counsel Assessment	<p>11.1. How many lawyers work on the department's matters who are women, racial/ethnic minorities, lawyers who are openly LGBTQ+ and/or lawyers who have disabilities?</p> <p>11.2. How many hours do the lawyers who are women, racial/ethnic minorities, lawyers who are openly LGBTQ+ and/or lawyers who have disabilities work on department matters?</p> <p>11.3. Of those of our matters that go to trial, how many first or second chairs are women, racial/ethnic minorities, lawyers who are openly LGBTQ+ and/or lawyers who have disabilities?</p> <p>11.4. Of those of our matters that are in arbitration, mediation, or any other form of alternative dispute resolution, how many times have we selected women, racial/ethnic minorities, lawyers who are openly LGBTQ+, and/or lawyers who have disabilities as neutrals?</p>
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C. Corporate Law Departments Seeking to Further Expand Ongoing DEI Efforts

All of the above, plus the following:

12. Visibility/Exposure	<p>12.1. Opportunities for senior leaders in the law department to meet, get to know, and work with lawyers in the law department who are women, racial/ethnic minorities, lawyers who are openly LGBTQ+ and/or lawyers who have disabilities.</p> <p>12.2. Opportunities for in-house counsel to meet and get to know outside counsel who are women, racial/ethnic minorities, lawyers who are openly LGBTQ+ and/or lawyers who have disabilities.</p> <p>12.3. Public speaking and leadership roles for White lawyers in the law department in organizations or programs built around supporting and educating others in DEI efforts.</p>
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13. Professional Development Opportunities	<p>Public speaking and leadership roles for lawyers in the law department who are women, racial/ethnic minorities, lawyers who are openly LGBTQ+ and/or lawyers who have disabilities in organizations or programs built around the substantive areas of law in which they practice.</p>
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14. Education	<p>14.1. Demographics for the profession</p> <p>14.2. DEI definitions, language, semantics, and terminology</p> <p>14.3. Bias, both explicit and implicit</p> <p>14.4. Gender diversity, including equal pay and gender discrimination issues</p> <p>14.5. Anti-racism</p> <p>14.6. Racial/ethnic diversity, including issues pertaining to lawyers who are African American, Asian American, Hispanic/Latinx, and Native American</p> <p>14.7. LGBTQ+ diversity; and</p> <p>14.8. Disability diversity</p>
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15. Division/ Practice Group Assessment	15.1. How is each division/department/practice group doing in terms of hiring and promoting lawyers and staff who are women, African American, Asian American, Hispanic/Latinx, Native American, openly LGBTQ+ and/or have disabilities? 15.2. Which are best suited to refer business to outside counsel? 15.3. How much of the work of each practice area or other groups that is being referred to outside counsel is being referred to lawyers who are women, African American, Asian American, Hispanic/Latinx, Native American, White, openly LGBTQ+ or have disabilities?
16. Compensation	Calculation of raises and bonuses tied to efforts to promote and advance DEI within the law department.
17. Accountability Protocols	Internal accountability protocols and goals for DEI efforts.
18. Annual Outside Counsel Assessment	Using each of the categories listed on KPI Chart B assess: 18.1. How many equity partners in the firm’s US offices are women, racial/ethnic minorities, lawyers who are openly LGBTQ+ and/or lawyers who have disabilities? 18.2. How many non-equity partners in the firm’s US offices are women, racial/ethnic minorities, lawyers who are openly LGBTQ+ and/or lawyers who have disabilities? 18.3. How many of counsel in the firm’s US offices are women, racial/ethnic minorities, lawyers who are openly LGBTQ+ and/or lawyers who have disabilities? 18.4. How many associates in the firm’s US offices are women, racial/ethnic minorities, lawyers who are openly LGBTQ+ and/or lawyers who have disabilities? 18.5. Have the numbers collected under 18.1, 18.2, 18.3 and 18.4 increased or decreased over the last year? Over the last five years? If so, by how much? 18.5.1. Develop standards and implement a protocol by which those firms that regularly or consistently report declining or unsatisfactory numbers are re-evaluated as to whether to continue to give new work to them.
19. Supplier Diversity Program	Minimum of 3% of the company legal spend is with diverse-owned law firms in which the majority ownership is by women, racial/ethnic minorities, lawyers who are openly LGBTQ+ and/or lawyers who have disabilities.
20. Preferred Providers	If using a preferred provider or panel counsel list of outside counsel firms, carve out an exception that permits lawyers to hire diverse outside counsel who are women, racial/ethnic minorities, openly LGBTQ+ and/or have disabilities from firms that are not part of the list.
21. Requests for Proposal	Include DEI component in all RFP’s issued.

D. Corporate Law Departments Wishing to be in the Forefront of the Profession's DEI Efforts

All of the above, plus the following:

22. Annual Department Meeting	Discuss DEI, including ideas and strategies for improvement and opportunities for members of the law department to voice any concerns or successes.
23. Outside Counsel Education	Training program to educate outside counsel who are women, racial/ethnic minorities, openly LGBTQ+ and/or have disabilities about the company's industry and business, the law department and the work to make it easier for in-house lawyers to assign matters to them.
24. Annual Outside Counsel Assessment	<ul style="list-style-type: none">24.1. Which lawyers in each firm receive financial compensation as part of their salary, bonus, or partnership draw or distribution that is based upon origination credit or credit for maintaining a relationship with the company?<ul style="list-style-type: none">24.1.1. How many are women, racial/ethnic minorities, openly LGBTQ+ and/or have disabilities?24.1.2. What percentage of the funds that each firm designates for origination credit and/or relationship management credit goes to partners who are women, racial/ethnic minorities, openly LGBTQ+ and/or have disabilities?24.1.3. Have those numbers and percentages in 24.1., 24.1.1., and 24.1.2. increased or decreased over the course of the preceding five years?24.2. Does the firm allow lawyers to work remotely, part-time or flextime with at least proportional progress on the partnership track?24.3. Does the firm have an ombudsperson or some other procedure or protocol to address diversity-related microaggressions/micro-inequities?24.4. Does the firm have at least one diversity professional on staff?<ul style="list-style-type: none">24.4.1. What is the amount of budget over which the diversity professional(s) has discretionary control?24.4.2. What role does the diversity professional(s) play in the firm's:<ul style="list-style-type: none">24.4.2.1. Recruiting and hiring?24.4.2.2. Attorney professional development?24.4.2.3. Associate performance reviews?24.5. Does the firm use a work allocation program or some other impartial method to ensure that lawyers who are women, racial/ethnic minorities, openly LGBTQ+ and/or have disabilities have opportunities to work assignments that will permit them to stretch and grow professionally?24.6. How many offers of employment did the firm extend to law students for summer associate positions or new law school graduates or lateral lawyers who are women, racial/ethnic minorities, openly LGBTQ+ and/or have disabilities in the firm's US office during each of the last three years?24.7. How many of the firm's US offices have no equity partners who are women, racial/ethnic minorities, openly LGBTQ+ and/or have disabilities?24.8. How many lawyers in the firm who are women, racial/ethnic minorities, openly LGBTQ+ and/or have disabilities became equity partners in the firm's US offices during each of the last five years?
25. Supplier Diversity Program	Minimum of 5% of the company legal spend is with diverse-owned law firms in which the majority ownership is by women, racial/ethnic minorities, lawyers who are openly LGBTQ+ and/or lawyers who have disabilities.

Part II: For Organizations and Departments Outside the US

Just as the legal profession has become increasingly global, so, too, have its diversity, equity and inclusion (“DEI”) efforts. The DEI values, goals, objectives, and approaches of the US, however, may not be appropriate or relevant for corporations and law departments outside the US. While similarities or parallels may exist in some parts of the world, it is a mistake to assume that KPIs for corporate law departments in the US can or should be applied outside the US. While in many parts of the world gender diversity is a common challenge being addressed, diversity based upon race, ethnicity, regionalism and geography, religion, sexual orientation and gender identity, language, social and socioeconomic differences, class, and caste may be dimensions of diversity that are relevant in some places but not others, or that bring varying levels of stigma, or are considered illegal. That makes it all the more difficult for global corporations that seek to establish some degree of uniformity or consistency across their organizational DEI efforts.

With that in mind, the Institute for Inclusion in the Legal Profession has developed these Key Performance Indicators (“KPIs”) specifically for use by corporate law departments located outside the US. They are general in nature because of the wide range of types of diversity that may be relevant in any specific country and are intended to be modified and adapted for use in different countries as the users see fit so as to be compliant with local laws, and respectful of, and sensitive to local standards, customs, and practices. Understanding that different countries and regions around the world are at different stages in their efforts to become more inclusive of people from groups that are underrepresented in their country/region, these KPIs are intentionally basic in nature. For those in countries or regions where the diversity, equity and inclusion efforts may be more or less sophisticated, we encourage the adaptation, editing and application of the three lists in the previous section and the list below as may be relevant and appropriate.

1. DEI Value Statement	DEI value statement specifically for the law department in the particular country or region, with both short-term and long-term goals, directed both internally and externally.
2. Scope	Which underrepresented groups in each country/region ought to be considered “diverse” for the purposes of the organization’s DEI efforts there?
3. Goals	3.1 Three-to-five internal goals. 3.2 Three-to-five external goals.
4. Annual Department Assessment	To the extent permitted under local laws assess: 4.1. How many members of the department are women, belong to racial/ethnic groups that are underrepresented in that country/region, openly LGBT+, have visible disabilities, and/or require accommodation for a disability or religious reasons? 4.2. How diverse is each position level, such as Counsel or Associate Counsel, etc.? 4.3. How diverse is each division, department, section and/or practice area? 4.4. How does the data collected for 4.1., 4.2., and 4.3. reflect individuals who may identify with two or more types of diversity?
5. Budget	5.1. To educate and train employees about DEI generally and in the legal profession specifically. 5.2. To fund lawyers who wish to attend and participate in the programs, activities, or leadership of DEI bar associations or other organizations.

6. DEI Committee	6.1. Regularly scheduled (at least quarterly) meetings. 6.2. Regularly scheduled programs for the law department (for the entire company or specifically by region or country, depending upon what makes the most sense) and others in the company who may be interested.
7. Performance Reviews	7.1. Emphasize competencies and skills, not subjective comments. ² 7.2. Include DEI activities, involvement, and leadership efforts. 7.3. Include a DEI component to the annual “stretch” goals.
8. Hiring and Promotion Procedures	Standard to ensure that diverse candidates are among those considered for any position or promotion.
9. Visibility/ Exposure	Publicizing and promoting the DEI efforts, achievements, and successes of the law department, as well as individuals within the law department.
10. Staffing	10.1. Lead the law department’s day-to-day DEI efforts. 10.2. Oversee, implement, and resource DEI efforts. 10.3. Compare annual assessment to historical trends, evaluate, and report. 10.4. Review all performance reviews for potential bias and look for trends. 10.5. Enforce hiring and promotion procedures.
11. Supplier Diversity Program	11.1. When appropriate in a given country/region, use diverse-owned law firms in which the majority ownership is by individuals from underrepresented groups. 11.2. Annually measure, monitor, and report on supplier diversity efforts.
12. Annual Outside Counsel Assessment	12.1. How many lawyers are there in each law firm who work on department matters who are from groups that are underrepresented in that country/region? 12.2. How many hours do the lawyers who are part of groups that are underrepresented in that country/region bill to department matters?
13. Reporting	DEI efforts in each country/region.

Endnotes

1. See the following resources for creating fair and accurate performance evaluations: *Bias Interrupters for Performance Evaluations*, <https://biasinterrupters.org/toolkits/orgtools/>; Joan C. Williams, et al., *You Can’t Change What You Can’t See: Interrupting Racial & Gender Bias in the Legal Profession, Executive Summary* (2018) 22-24, <https://www.mcca.com/wp-content/uploads/2018/09/You-Cant-Change-What-You-Cant-See-Executive-Summary.pdf>; and Joan C. Williams and Consuela Pinto, *Fair Measure: Toward Effective Attorney Evaluations* (2008), https://www.americanbar.org/content/dam/aba-cms-dotorg/products/inv/book/213649/4920043usersguide_abs.pdf.
2. See *id.*

KPI CHART A

DEI Totals				
Lawyers who identify as being (or having):	Women	Men	Non-Binary	Total
Black/African American				
Asian Pacific American				
Hispanic or Latinx				
Native American				
White/European American				
LGBTQ+				
Disabilities				
Black/African American + LGBTQ+				
Asian Pacific American + LGBTQ+				
Hispanic or Latinx + LGBTQ+				
Native American + LGBTQ+				
White/European American + LGBTQ+				
Black/African American w/Disabilities				
Asian Pacific American w/Disabilities				
Hispanic or Latinx w/Disabilities				
Native American w/Disabilities				
White/European American w/Disabilities				
LGBTQ+ w/Disabilities				
Black/African American + LGBTQ+ w/Disabilities				
Asian Pacific American + LGBTQ+ w/Disabilities				
Hispanic or Latinx + LGBTQ+ w/Disabilities				
Native American + LGBTQ+ w/Disabilities				
White/European American + LGBTQ+ w/Disabilities				
Totals				

KPI CHART B

DEI Totals		Women	Men	Non-Binary	Total
Lawyers who identify as being (or having):					
Black/African American					
Asian Pacific American					
Hispanic or Latinx					
Native American					
White/European American					
LGBTQ+					
Disabilities					
Two or More Races					
	Black + Asian				
	Black + Hispanic				
	Black + Native American				
	Black + White				
	Black + Asian + Hispanic				
	Black + Asian + Native American				
	Black + Asian + White				
	Black + Hispanic + Native American				
	Black + Hispanic + White				
	Black + Native American + White				
	Asian + Hispanic				
	Asian + Native American				
	Asian + White				
	Asian + Hispanic + Native American				
	Asian + Hispanic + White				
	Asian + Native American + White				
	Hispanic + Native American				
	Hispanic + White				
	Hispanic + Native American + White				
	Native American + White				
Black/African American + LGBTQ+					
Asian Pacific American + LGBTQ+					
Hispanic or Latinx + LGBTQ+					
Native American + LGBTQ+					
White/European American + LGBTQ+					
Black/African American w/Disabilities					
Asian Pacific American w/Disabilities					
Hispanic or Latinx w/Disabilities					
Native American w/Disabilities					
White/European American w/Disabilities					
LGBTQ+ w/Disabilities					
Black/African American + LGBTQ+ w/Disabilities					
Asian Pacific American + LGBTQ+ w/Disabilities					
Hispanic or Latinx + LGBTQ+ w/Disabilities					
Native American + LGBTQ+ w/Disabilities					
White/European American + LGBTQ+ w/Disabilities					
Totals					



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