



The National Federation of Paralegal Associations, Inc. Position Statement on Diversity, Inclusion, and Equity

The National Federation of Paralegal Associations, Inc. (NFPA) believes that a diverse group of talented legal professionals is critically important to the success of every law firm, corporate or governmental legal department, paralegal education program, public service organization, and every other organization that includes paralegals. Diversity is an inclusive concept and encompasses, without limitation, race, color, ethnicity, age, gender, sexual orientation, gender identity and expression, religion, nationality, any disability, military or veteran status, social or economic status, or marital or parental status. Valuing diversity means appreciating the many advantages that different people contribute to the richness of our culture. It means behaving in a way that fosters respect for individual differences and the treatment of each person based on his, her, or their own merit. NFPA has adopted and supports the following diversity statement:

One of the greatest resources of the paralegal profession is the racial, ethnic, cultural, religious, national origin, indigenous heritage, marital or parental status, socio-economic status, disability or differently abled status, military service or veteran status, sexual orientation or identity, age, gender, residency status, physical characteristics, health status, justice and adjudication status, and social diversity of its members. The National Federation of Paralegal Associations, Inc. ("NFPA") takes great pride in this diversity. NFPA welcomes, respects, promotes and supports diversity and inclusion in all aspects of its membership, in its vendors and contractors, and with paralegal educators, paralegal students, the paralegal profession, the legal profession, bar associations, and the courts.

BACKGROUND

Over the past few years, many law firms and corporations have devoted increasing resources to diversity initiatives as well as to the management and administration of these efforts. Americans are increasingly more diverse than in the past, and the U.S. is projected to be even more diverse in the coming decades. The society we live, work and do business in is a rich tapestry of diversity and continues to grow more diverse by the year. According to data from the U.S. Census Bureau, our nation will no longer have any single ethnic or racial majority by the year 2065.

This change began slowly due to major historical events which have drastically reshaped the United States over time. Women joined the workforce during wartime. The abolition of slavery

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and the promulgation of civil rights laws supported people of color in joining the workforce and earning a stronger voice in the process. Legislation enacted and civil rights movements in recent years have led to greater rights for those with disabilities as well as lesbian, bisexual, gay, and transgender individuals.

The following are major points in history that dramatically increased diversity in the workplace:

1. President Abraham Lincoln's Emancipation Proclamation in 1863 declaring the freedom of slaves and the 13th Amendment that followed in 1865 outlawing slavery.
2. In 1913, Henry Ford offered \$5 a day (twice the typical daily wage) to attract immigrants and African Americans. By 1916, Ford's employees represented 62 nationalities and employed over 900 persons with disabilities.
3. Women joined the workforce in great numbers in 1917 during World War I.
4. The Women's Bureau of the Department of Labor was formed in 1920.
5. President Harry S. Truman integrated the military in 1948.
6. In 1961, President John F. Kennedy improved hiring practices for women and established maternity leave.
7. President Lyndon B. Johnson enactment of the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

There currently exist laws that protect against discrimination, including equal opportunity laws to promote diversity. However, these laws do not guarantee equality or inclusion in the workplace. Some of the most significant acts and decisions protecting individuals from discrimination include:

1. The Equal Pay Act of 1963 which prohibits sex discrimination and enforces equal wages for women and men performing equal work in the same establishment.
2. Title VII of the Civil Rights Act of 1964 which prohibits employment discrimination based on race, color, age, religion, sex, and national origin.
3. The Age Discrimination in Employment Act of 1967 which protects applicants and employees 40 years of age or older from discrimination on the basis of age.
4. Title IX of the Education Amendments of 1972 which prohibits discrimination on the basis of sex in any federally funded education program or activity.

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5. The Rehabilitation Act of 1973 which authorizes a nationwide service system to assist persons with disabilities to attain employment, independent living, and an improved quality of life.
6. The nondiscrimination and affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, covers employers with federal contracts or subcontracts that meet the threshold amount specified in the statute, placing on employers the obligation to refrain from discrimination in employment against protected veterans.
7. The Pregnancy Discrimination Act of 1978 which prohibit sex discrimination on the basis of pregnancy (amendment to Title VII of the Civil Rights Act of 1964).
8. The Americans with Disabilities Act of 1990 which protects applicants and employees with disabilities from discrimination in many aspects of employment on the basis of disability, and also requires that employers provide applicants and employees with disabilities with reasonable accommodations in the workplace.
9. The Civil Rights Act of 1991 which provided the right to trial by jury on discrimination claims, introduced the possibility of emotional distress damages, and limited the amount that a jury could award (amendment to the Civil Rights Act of 1964).
10. The Genetic Information Nondiscrimination Act of 2008 which makes it illegal to discriminate against employees or applicants because of genetic information (information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder or condition of an individual's family members).
11. The Lily Ledbetter Fair Pay Act of 2009 which allows employees to challenge employer decisions about base pay or wages, job classifications, career ladder or other noncompetitive promotion denials, tenure denials, and failure to respond to requests for raises.
12. In August 2011, President Barack Obama signed Executive Order 13583 "[e]stablishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce." The executive order, in part, promotes equal employment opportunity, diversity, and inclusion in the federal workforce. The order sought to identify strategies to remove barriers to equal opportunity in federal government recruitment, hiring, promotion, retention, professional development, and training.
13. In 2015, the U.S. Supreme Court held that same-sex marriage is legal in all 50 states.

14. In 2016, the U.S. Supreme Court upheld the consideration of race and ethnicity in college admissions.
15. In 2020, the U.S. Supreme Court held that the protection under Title VII of the Civil Rights Act of 1964 that bars discrimination based on sex is applicable to and protects LGBTQ workers.
16. In 2020, the U.S. Supreme Court blocked the attempt to end Deferred Action for Childhood Arrivals, a program that protects about 7000,000 immigrants brought to the United States as children from deportation.

Indeed, according to the U.S. Supreme Court, the benefits of understanding cultural diversity "are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints." *Grutter v. Bollinger*, 539 U.S. 306, 330, 123 S.Ct. 2325, 2340, 156 L.Ed. 2d 304 (2003). Analogously, in its landmark decision on marriage equality, the Supreme Court addressed issues of inclusion and equity. *See Obergefell v. Hodges*, 135 S.Ct. 2584, 2604, 192 L.Ed. 2d 609 (2015), "[t]he right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty."

In another landmark decision addressing inclusion and equity, the Supreme Court extended federal civil rights law to LGBTQ workers through its determination that the language of Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination, applies to discrimination based on sexual orientation and gender identity. *See Bostock v. Clayton County, Georgia*, No. 17-1618 (U.S. Jun. 15, 2020) (consolidated with No. 17-1623, *Altitude Express Inc. v. Zarda et al., as Co-Independent Executors of the Estate of Zarda*, and No. 18-107, *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission et al.*). "An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."

In an important immigration decision, the Supreme Court entered a provisional decision based on procedural issues related to the Deferred Action for Childhood Arrivals (DACA) program. The DACA program was established in 2012 and allowed individuals who arrived in the United States as children without proper identification or who overstayed their visas as children to be deferred from any removal proceedings. Additionally, the DACA program allowed these individuals to lawfully work in the United States. *See Department of Homeland Security et al. v. Regents of California et al.*, No. 18-587 (U.S. Jun. 18, 2020).

Demographic changes in our society and an increasingly global economy fuel the need for a greater understanding of cultural diversity, inclusion, and equity. Consider these national trends:

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- 73.7 percent of women between the ages of 25 and 54 were participating in the work force as of 2016.
- A significant proportion of recent growth in the labor force has been due to increases in Black/African-American and Afro-Latin/Chicano/Latin/Indigenous workers. When Black/African-American and Afro-Latin/Chicano/Latin/Indigenous people are combined with Asian Americans, these groups account for nearly 60 percent of the net labor force growth since 2007.
- From 2000 to 2015, the Asian American population in the U.S. increased by 72 percent.
- Afro-Latin/Chicano/Latin/Indigenous people accounted for 52 percent of total U.S. population growth from 2008 to 2018, reaching 59.9 million in 2018. In 2020, they were the second-largest racial or ethnic group behind whites.
- From 2008-2018, the Black/African-American population increased by 15 percent.
- In 2017, 43 percent of women ages 25 to 64 held a bachelor's degree.
- By 2024, Millennials and Generation Z will comprise nearly 45 percent of all eligible voters.
- By 2050, 54 percent of the U.S. population will be non-white.

In the United States, systems of power grant privilege and access unequally such that inequity and injustice is a result, and must be continuously addressed and changed. Equity is interrelated with diversity and inclusion. Equity is defined as the fair treatment, access, opportunity, and advancement for all people, while at the same time striving to identify and eliminate barriers that have prevented the full participation of some groups. To have equitable systems, all people should be treated fairly, unhampered by artificial barriers, stereotypes or prejudices (The Blackwell Encyclopedia of Management, C.L. Cooper, 2016).

Equity and equality are two strategies to be used in an effort to produce fairness. Equity means providing everyone with the tools to be successful and is closely tied to actions and results.

Equitable consciousness relates to the mitigation of bullying and harassment as a barrier to inclusion. This comprises intentionally hurtful actions; aggressive behavior that involves unwanted and negative actions; intimidation and persecution; a pattern of behavior repeated over time; and an imbalance of power or strength. Equitable consciousness involves ongoing self-reflection and growth. The lack of consciousness related to bullying and harassment denotes conceivable malfeasance and potential ethical violations.

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Finally, the disciplinary rules that regulate the practice of law, in many instances, require lawyers to understand and embrace diversity in a multicultural society. See American Bar Association (ABA) Model Rule 8.4(g) which states that it is professional misconduct for a lawyer to "engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law..."

A lawyer who both fails to recognize cultural diversity, and to incorporate this understanding into his, her, or their practice, risks discipline. Paralegals are expected to adhere to the same ethical standards as lawyers. The failure to incorporate this understanding risks placing an attorney, law firm, or corporate legal department at risk for disciplinary action.

CONCLUSION

When examining diversity, the focus should include common traits as well as wider societal and cultural differences. While the concept of culture can be broad or narrow, it is important to note that it changes over time. Working in a diverse and inclusive society requires being responsive to these changes. This is an evolutionary process which is not about different standards but rather, an opportunity to increase diversity, embrace inclusion, and foster equity. When individuals with unique and disparate talents, outlooks, and ideas are met with respect and embraced as part of a community, ingenuity thrives.

Prepared for the National Federation of Paralegal Associations, Inc. by the Diversity, Inclusion, and Equity Committee. The Position Statement was unanimously approved by the delegates at the Seattle Convention in October 2018 and is updated every two (2) years.

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