



# LOOKING IN & LEADING OUT

Key Findings on Diversity  
from the **UCLI 2020**  
Certification Program Survey

# CREDITS

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# INTRODUCTION

**PURPOSE OF THIS REPORT.** Law is one of the least diverse professions in the country.<sup>1</sup> Utah's legal community is no exception. We are a profession with worthy aspirations like ensuring access to justice, fairness, and equality before the law. To reach these goals, our legal institutions must represent the communities we serve. Many legal employers and members of the profession recognize this and are working to make Utah's legal profession more diverse, equitable, and inclusive. This report aims to support that work.

This report is based on data collected from a survey of Utah legal employers participating in the Utah Center for Legal Inclusion's (UCLI) Certification Program. [UCLI's Certification Program](#) attracts law firms and legal organizations seeking to improve diversity, equity, and inclusion (DEI) within their organization. The Certification Program offers employers methods, strategies, policies, and standards for addressing DEI.<sup>2</sup> The survey was administered between November 2020 and January 2021 and focuses on understanding the representation of different racial, gender identity, sexual orientation, and disability status groups in Utah's legal profession. The data capture the demographic makeup and policies of legal employers as of December 31, 2019. This report provides a benchmark that legal employers can use to gauge their success in attracting, retaining, and promoting diverse talent going forward. It is also a resource for employers interested in making their

workspaces more diverse, equitable, and inclusive. UCLI intends to gather data in future years to compare to this baseline. This report is a resource for everyone involved in Utah's legal field, including those who may one day enter it.

For partners, senior attorneys, managers, owners, and others in workplace leadership, this report presents the results of UCLI's certification survey, identifies trends, and offers best practice suggestions. In large part, this report was drafted with you in mind. Your leadership and commitment are necessary for Utah's legal field to see sustainable improvement in the hiring, advancement, and retention of attorneys from underrepresented groups.

For diverse lawyers, the data reported here reflect your presence, work, and dedication to improving the field for yourself and people like you. This report recognizes the contributions you have made and will continue to make to Utah's legal profession. The authors hope this report will, at some level, validate your experiences and support your work.

For lawyers, legal paraprofessionals, law students and those interested in entering the legal field, this report is a primer on diversity, equity, and inclusion in law in Utah. Many in Utah's legal profession are working to diversify our ranks, create and promote more equitable workplace policies, and foster an inclusive culture. The authors of this report hope you will join in this work.

<sup>1</sup> Allison E. Laffey & Allison Ng, *Diversity and Inclusion in the Law: Challenges and Initiatives* (May 2, 2018), <https://www.americanbar.org/groups/litigation/committees/jiop/articles/2018/diversity-and-inclusion-in-the-law-challenges-and-initiatives/>.

<sup>2</sup> UCLI, *UCLI Certification Program Overview* (2021), <https://www.utahcli.org/certification/>.

The data and best practices this report presents are not just for legal employers or attorneys from underrepresented groups. They are for everyone in the legal community. We each have a role to play in looking inward at our current practices, understanding what it will take to improve ourselves and the systems in which we operate, and leading out to make Utah’s legal community a welcoming place that’s an example for others to emulate.

**ABOUT THE UTAH CENTER FOR LEGAL INCLUSION.** UCLI was formed in response to a long-observed pattern in the legal profession: a lack of diversity, particularly of diversity in senior roles. To fully realize the values underlying our American legal system—fairness, representation, access to justice, and equality before the law, among others—it is imperative that the legal profession adequately represent the communities it sets out to serve. Often, advocating for or coordinating the implementation of equitable and inclusive policies falls to the members of underrepresented groups these policies are supposed to support. This can lead to burnout and advocacy fatigue.

UCLI aims to play a critical role in resolving these issues. By coordinating with the Utah State Bar and its affinity groups, legal employers, government agencies, educational institutions, businesses, and community partners, UCLI strives to enhance organizational inclusion, facilitate educational opportunities and professional advancement for students and attorneys with diverse backgrounds, and track the progress of legal inclusion efforts throughout the state. Taking on the role of collecting and presenting benchmark diversity data is just one way in which UCLI is working to advance diverse representation and bring about an equitable and inclusive future for Utah’s legal institutions and justice system.

**ABOUT JUSTICE LAB.** Justice Lab is an intensive clinical course at the S.J. Quinney College of Law where students engage in public interest legal work. Justice Lab students work on projects related to access to justice, public policy, and systemic change. Small teams of students work directly with government and nonprofit clients to advance social change throughout the semester-long course.

**SUMMARY OF KEY FINDINGS.** The UCLI survey gives insight into the demographics of Utah’s legal profession.<sup>3</sup> Key findings include:

- **Key Finding #1:** Black, Indigenous, and people of color (BIPOC)<sup>4</sup> occupy less than 5% of equity partner positions. Proportional BIPOC representation decreases from associate to equity partner.
- **Key Finding #2:** Women and men are hired as associates at similar rates but at each level of advancement women’s proportional representation decreases as men’s increases.
- **Key Finding #3:** Women are twice as likely as men to have part-time schedules.
- **Key Finding #4:** The percentage of LGBTQ+ attorneys is 3.5 times lower than the percentage of LGBTQ+ attorneys nationally.<sup>5</sup>
- **Key Finding #5:** The percentage of attorneys in Utah with a disability is less than 1% of all attorneys, but is almost six times lower than other employed Utahns with a disability.
- **Key Finding #6:** Respondent employers in Utah have fewer DEI and schedule flexibility policies than regional legal employers.

3 Due to methodology (particularly employer reporting) data on disabled and LGBTQ+ populations are limited in this survey.

4 Refers to race/ethnicity and includes census categories: Asian, Black or African American, Latinx, Native American or Alaska Native, Native Hawaiian or other Pacific Islander, and multiracial lawyers. References to racial and ethnic representation refer to these same census categories.

5 National Association for Law Placement, *2020 Report on Diversity in U.S. Law Firms* 10 (2021) (reporting 2.99% of U.S. attorneys identify as LGBTQ) [hereinafter NALP 2020 Report on Diversity].

# WHY DIVERSITY, EQUITY, AND INCLUSION MATTER

Many lawyers enter the profession because of an interest in justice, equality, and fairness. As lawyers, we want to contribute to ensuring a just society, equitable outcomes for our clients, and fair legal systems. By promoting diversity, equity, and inclusion, the legal profession can advance these broader goals.<sup>6</sup>

Beyond advancing worthy community goals, diversity adds value to our relationships and spurs professional growth. It also leads to beneficial business outcomes.<sup>7</sup>

**DIVERSITY, EQUITY, AND INCLUSION ARE GOOD FOR BUSINESS.** Diverse workplaces often produce more innovative ideas,<sup>8</sup> greater productivity,<sup>9</sup> and happier employees.<sup>10</sup> Research has also found that diversity is better for the

bottom line when considering diversity of race,<sup>11</sup> gender,<sup>12</sup> and sexual orientation or identity.<sup>13</sup> Not only are employees in diverse and inclusive workforces putting in more discretionary effort (the extra work that employees put in because they want to, rather than are required to),<sup>14</sup> they also have greater intent to stay at such workplaces.<sup>15</sup> This means that diversity not only increases productivity on the employee level, it may also increase productivity at the organizational level by allowing greater focus on business efforts rather than the time-consuming hiring process. In addition, diverse legal teams “achieve significantly higher performance ratings.”<sup>16</sup> Collaboration and team commitment are greater within diverse workforces.<sup>17</sup>

In addition, business entities that hire law firms are placing market pressure on legal employers

to focus on DEI. Many Utah business leaders have publicly recognized the importance of racial DEI.<sup>18</sup> Clients want law firms that are embracing diversity.<sup>19</sup> In a competitive legal market, those who are committed to diversity, equity, and inclusion not only show potential clients that they are able to attract and retain diverse talent, but also show that they are equipped to handle diverse and complex issues. But promoting diversity on the surface without implementing inclusive policies and best practices can lead to burnout, ostracism, tokenism, and conflict. The benefits of a diverse workplace community are real and employers who are willing to do the work to recruit more diverse talent and build inclusive cultures to retain it are the ones who are investing in the future.

<sup>6</sup> See, e.g., Alison Cook & Christy Glass, *Do Women Advance Equity? The Effect of Gender Leadership Composition on LGBT-Friendly Policies in American Firms*, 69(7) HUM. RELS. 1431, 1448–49 (2016) (“[L]eadership composition is an important predictor of [inclusive] policy adoption . . . . [I]n terms of advancing LGBT-inclusive policies, diversity in the boardroom is associated with critical strategic outcomes.”).

<sup>7</sup> Institute for Inclusion in the Legal Profession, *The Business Case for Diversity: Reality or Wishful Thinking* (2011) (finding that “a business case for diversity exists, [but] understanding what it means and what expectations flow from it differ dramatically from one group of stakeholders to the next”).

<sup>8</sup> Kim C. Brimhall & Mich  lle E. Mor Barak, *The Critical Role of Workplace Inclusion in Fostering Innovation, Job Satisfaction, and Quality of Care in a Diverse Human Service Organization*, 42(5) HUM. SERV. ORGS. 474, 474 (2018) (“[S]ome of the positive effects of diversity include enhanced creativity and innovation, improved workplace commitment, and increased retention.”).

<sup>9</sup> Corporate Leadership Council, *Creating Competitive Advantage Through Workforce Diversity*, CORP. EXEC. BD. 3 (2012).

<sup>10</sup> Kim C. Brimhall & Mich  lle E. Mor Barak, *The Critical Role of Workplace Inclusion in Fostering Innovation, Job Satisfaction, and Quality of Care in a Diverse Human Service Organization*, 42(5) HUM. SERV. ORGS. 474, 475 (2018) (“The growing literature on this topic suggests that creating an inclusive workplace . . . results in positive outcomes, such as increased job satisfaction[.]”).

<sup>11</sup> Cedric Herring, *Does Diversity Pay? Race, Gender, and the Business Case for Diversity*, 74 AM. SOC. REV. 208, 208 (Apr. 2009) (“[R]acial diversity is associated with increased sales revenue, more customers, greater market share, and greater relative profits.”).

<sup>12</sup> *Id.* (“Gender diversity is associated with increased sales revenue, more customers and greater relative profits.”). *But see* Cristian L. Dezs   & David Gaddis Ross, *Does Female Representation in Top Management Improve Firm Performance? A Panel Data Investigation*, 33 STRATEGIC MGMT. J. 1072, 1072 (2012) (“[F]emale representation in top management improves firm performance but only to the extent that a firm’s strategy is focused on innovation[.]”).

<sup>13</sup> Peng Wang & Joshua L. Schwartz, *Stock Price Reactions to GLBT Nondiscrimination Policies*, 49(2) HUM. RES. MGMT. 195, 212 (2010) (finding “that there is economic value in companies’ efforts devoted to equal treatment for LGBT employees”).

<sup>14</sup> Corporate Leadership Council, *Creating Competitive Advantage Through Workforce Diversity*, CORP. EXEC. BD. 3 (2012) (finding 12% higher employee discretionary effort in diverse and inclusive workforces).

<sup>15</sup> *Id.* (finding 19% greater intent to stay).

<sup>16</sup> Thomson Reuters Legal, *The business case for diversity and inclusion in a law department*, <https://legal.thomsonreuters.com/en/insights/articles/law-diversity-inclusion> (last visited Apr. 24, 2021) (“[G]ender diverse law department teams achieve significantly higher performance ratings . . . and ethnically diverse executive teams are 33% more likely to outperform their peers on profitability.”).

<sup>17</sup> Corporate Leadership Council, at 4 (finding that workforces where employees agreed that “[d]iversity is well represented in my organization” and that “[d]ivergent perspectives are valued in my organization” had 57% more team collaboration and 42% greater team commitment).

<sup>18</sup> Salt Lake Chamber, *Utah Compact on Racial Equity, Diversity, and Inclusion: A Declaration of Five Principles and Actions to Create Equal Opportunity*, <https://slchamber.com/utahcompact/> (last visited Apr. 10, 2021) (pledging “to advance behavior on an individual, business, and government level that will establish priorities and laws that create equal opportunity and access for all” and committing to “advance solutions to racial ills by listening and creating policies that provide equal opportunity and access to education, employment, housing, and healthcare”); Diversity Lab, *Legal Department (AKA Clients) Efforts Designed to Drive Outside Counsel Diversity* (July 8, 2017), <https://www.diversitylab.com/knowledge-sharing/clients-push-for-diversity/> (identifying corporate clients that have diversity criteria that outside counsel must meet).

<sup>19</sup> Ruiqi Chen, *Companies Want Lawyer Diversity, But Firms Lack Set Standard*, BLOOMBERG L. (Feb. 12, 2021, 11:00 AM), <https://news.bloomberglaw.com/business-and-practice/companies-want-lawyer-diversity-but-no-set-standard-for-firms>; Sara Randazzo, *Law-Firm Clients Demand More Black Attorneys*, WALL ST. J. (Nov. 2, 2020, 5:30 AM), <https://www.wsj.com/articles/law-firm-clients-demand-more-black-attorneys-11604313000>.



# THE UCLI SURVEY

**RESEARCH DESIGN AND METHODS.** UCLI distributed the 2020 Certification Program Survey to legal employers participating in UCLI’s Certification Program. The survey was sent to 53 employers starting in November 2020 and received 31 unique responses before closing at the end of January 2021.<sup>20</sup> The survey collected data from legal employers throughout the state and captured demographic data from more than 1700 Utah attorneys. This report anonymizes all data reported.

The survey was completed by a representative from each employer. This method aimed to ensure that the data accounts for all attorneys at each respondent employer, rather than just those who might respond to a survey sent to individual attorneys and paralegals.

Respondent employer size ranged from 3 to 273 attorneys. Employers included private law firms, government offices, non-profit legal groups, and in-house counsel offices of private companies. The survey focused on four main demographic categories: race and ethnicity, gender, LGBTQ+, and disability status. Law firm demographic data is generally separated into two categories: employee title (including equity partner, non-equity partner, associate, of counsel, summer associate, and paralegal) and employer size (including firms of 2–20, 21–50, 51–100, and 100+ attorneys). The survey

also collected information about legal employers’ internal policies. Government offices and other legal organizations that do not follow these categories selected the most similar categories. For example, a senior attorney in a government office was grouped with non-equity partners at private firms.

The purpose of the survey was to create a baseline of demographic information on Utah’s legal community. Participating employers represent a variety of practice areas and specialties, ranging from family law and intellectual property to criminal law and corporate litigation. The employers were on average larger than those that make up Utah’s legal profession as a whole.<sup>21</sup> For example, only six percent of the demographic data captured in the survey is from attorneys who work at offices with less than 20 total attorneys, despite more than half of all Utah lawyers working at legal offices with less than 30 attorneys.<sup>22</sup> In other words, the data underrepresents attorneys from small firms.

After the data collection stage, Justice Lab students from S.J. Quinney College of Law cleaned the data and analyzed the responses. Responses from all 31 employers are included in the data reported here. Data submitted from employers with significant presence outside of Utah were excluded from the demographic data in each Utah analysis but were included for regional comparison in the policy data

in Key Finding #6. Data from a total of 28 legal employers were included in the gender findings and data from 27 legal employers were relied on for the remaining demographic findings in this report. Raw numbers of attorneys were converted into percentages, given the total numbers reported by survey respondents. Responses about policies were sometimes turned into percentages by counting the number of “Yes” responses and “No” responses, indicating whether a given employer had or did not have a listed policy.

**ADDITIONAL DATA SOURCES.** Data from the National Association for Law Placement’s (NALP) 2020 Report on Diversity in U.S. Law Firms was used to provide a regional comparison to demographic representation in similar states. NALP collects data from metropolitan areas, rather than from entire states. This is a useful comparison to the UCLI responses because the majority of UCLI survey responses were from legal employers in the Salt Lake City metropolitan area. NALP data from legal employers with offices in the Denver, Phoenix, and Portland areas were used to provide the regional comparison. These regions were selected to provide a rough comparison to Utah’s legal market, in both geography and demographics.

Justice Lab students also sought reflections from attorneys and law students from underrepresented groups in Utah. Respondents were asked to share experiences in the legal field where their diverse identity played a role in how they were treated, the type of law they chose to pursue, or whether they considered leaving the profession. It was sent to attorneys through UCLI and Utah State Bar affinity groups (including the Utah Minority Bar Association and Women Lawyers of Utah) and to law students at the S.J. Quinney College of Law. This report draws on the responses to highlight the lived experiences of these attorneys and law students in Utah. Quotes from these responses are included throughout this report.

20 The group of employers that failed to respond did not have any particular characteristics. There was no particular size or type of employer that tended to fail to respond.

21 Approximately 8% of attorneys in the UCLI survey worked at employers with fewer than 20 attorneys. A recent Utah Bar survey found that 55% of attorneys worked at employers with less than 30 attorneys. Utah State Bar, *2020 Utah State Bar Member Survey Final Results* 108 (Apr. 8, 2020), <https://www.utahbar.org/wp-content/uploads/2020/11/Bar-Survey.pdf> [hereinafter *2020 Utah State Bar Survey*].

22 2020 Utah State Bar Member Survey.

# KEY FINDING #1

BIPOC occupy less than 5% of equity partner positions. Proportional BIPOC representation decreases from associate to equity partner.

Black, Indigenous, and people of color (“BIPOC”)<sup>23</sup> are vastly underrepresented in the legal field. In the United States, members of BIPOC communities make up approximately 40% of the overall population, but only 18% of lawyers.<sup>24</sup> A similar disparity between the representative proportion of BIPOC communities and BIPOC lawyers is present in Utah. Approximately **22% of the population in Utah is BIPOC, but only 9% of attorneys and 13% of paralegals** in the Utah legal community were reported as BIPOC.<sup>25</sup>

9

In the UCLI survey data, BIPOC representation is highest in summer associate (17%) and paralegal (14%) roles and decreases as seniority increases within legal organizations, from associate (8%) to equity partner (4%). The first chart depicts the number of legal professionals by role in the UCLI data.

The UCLI data suggests employer size may play a role in the decrease in BIPOC representation in more senior positions, but also makes clear that regardless of the number of attorneys at an employer, BIPOC legal professionals are underrepresented. Medium-sized employers of 21–50 attorneys had the highest percentage of BIPOC summer associates and associates, but the lowest percentage of BIPOC attorneys in partner positions, perhaps indicating a recent push by employers of this size to add more racial diversity to their staff.

An important method for increasing diversity and inclusion at every level of a legal office’s seniority is having BIPOC attorneys or professionals sit on

23 Refers to race/ethnicity and includes census categories: Asian, Black or African American, Latinx, Native American or Alaska Native, Native Hawaiian or other Pacific Islander, and multiracial lawyers. References to racial and ethnic representation include these same census categories.

24 NALP 2020 Diversity Report at 16.

25 The Utah State Bar tracks the White, non-hispanic demographic as “Caucasian” which is no longer a U.S. Census category, and may slightly skew the racial data due to the manner in which they are reported (e.g., allowing respondents to select “Caucasian” along with other identifiers). 2020 Utah State Bar Member Survey; U.S. Census V2019, QuickFacts.

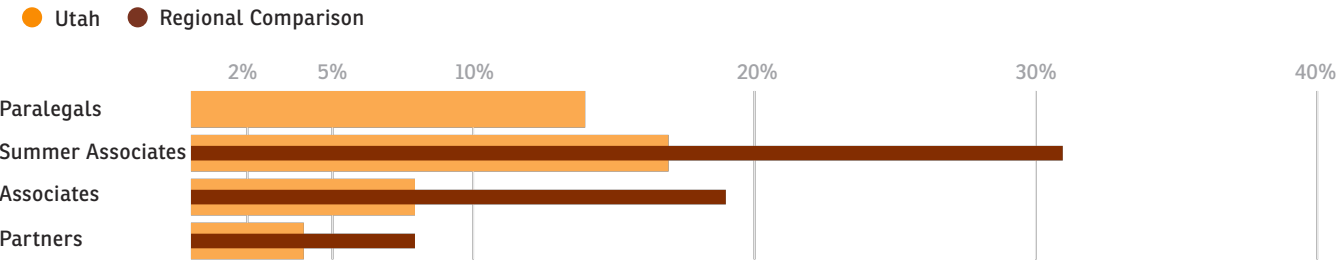
decision making committees.<sup>26</sup> Of the employers in the UCLI survey, 40% require the inclusion of at least one BIPOC attorney on committees related to hiring, 27% require inclusion on committees related to compensation, and 38% require inclusion on committees related to promotion. Several legal employers reported having committees or specific representatives dedicated to matters of organizational diversity and inclusion. Of the legal employers surveyed, about 50% stated they had a committee specifically dedicated to DEI, but only about 30% reported giving billable hour credit to attorneys for work related to diversity and inclusion efforts. If BIPOC attorneys are asked to sit on DEI committees or take on other DEI efforts in addition to the workload expected of other attorneys, BIPOC attorneys may become disproportionately burdened with these well-intentioned obligations.<sup>27</sup> In general,

legal employers whose diversity committees were tasked with writing and reviewing DEI policies were also the ones giving billable credit to attorneys for work related to diversity and inclusion efforts. The responsibilities of other, non-compensated DEI committees were often vague.<sup>28</sup>

Utah’s law schools have among the lowest rates of BIPOC student representation in the region at roughly 17 percent.<sup>29</sup> In a 2021 analysis of the 200 Whitest Law Schools, Utah’s two law schools ranked 89th (University of Utah S.J. Quinney College of Law) and 91st (Brigham Young University J. Reuben Clark Law School).<sup>30</sup> However, **there is still greater BIPOC representation at Utah law schools (17% BIPOC) than at Utah legal employers (9% BIPOC).**

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## BIPOC Representation by Role in Utah's Legal Profession



Source: UCLI 2020 Certification Program Survey, 2020 NALP Report on Diversity

Note: Regional comparisons for this and subsequent graphics in this section are based on 2020 NALP data from legal employers with offices in the Denver, Phoenix, and Portland areas. These regions were selected to provide a rough comparison to Utah’s legal market, both in geography and demographics. Paralegal data was not available in the NALP report.

26 Alexandra Kalev, Erin Kelly & Frank Dobbin, *Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies*, 71 AM. SOC. REV. 589, 590 (2006) (“We find a clear pattern in the data. Structures establishing responsibility (affirmative action plans, diversity committees, and diversity staff positions) are followed by significant increases in managerial diversity.”).

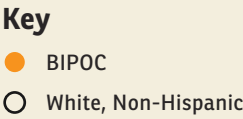
27 ABA COMMISSION ON WOMEN IN THE PROFESSION, *VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS* 38 (2006) (“Women of color should definitely continue to be included in a firm’s diversity and professional development efforts because their voices are critical in these processes, but they should not be relegated to committees that focus on diversity, nor should they assume responsibility for the creation and maintenance of diversity within the firm.”).

28 Examples of vague responsibilities include “advise on issues related to DEI,” “report on DEI efforts both inside and outside the [organization],” “discussing matters of diversity and inclusion at the firm,” “becoming educated about inclusion and diversity,” etc.

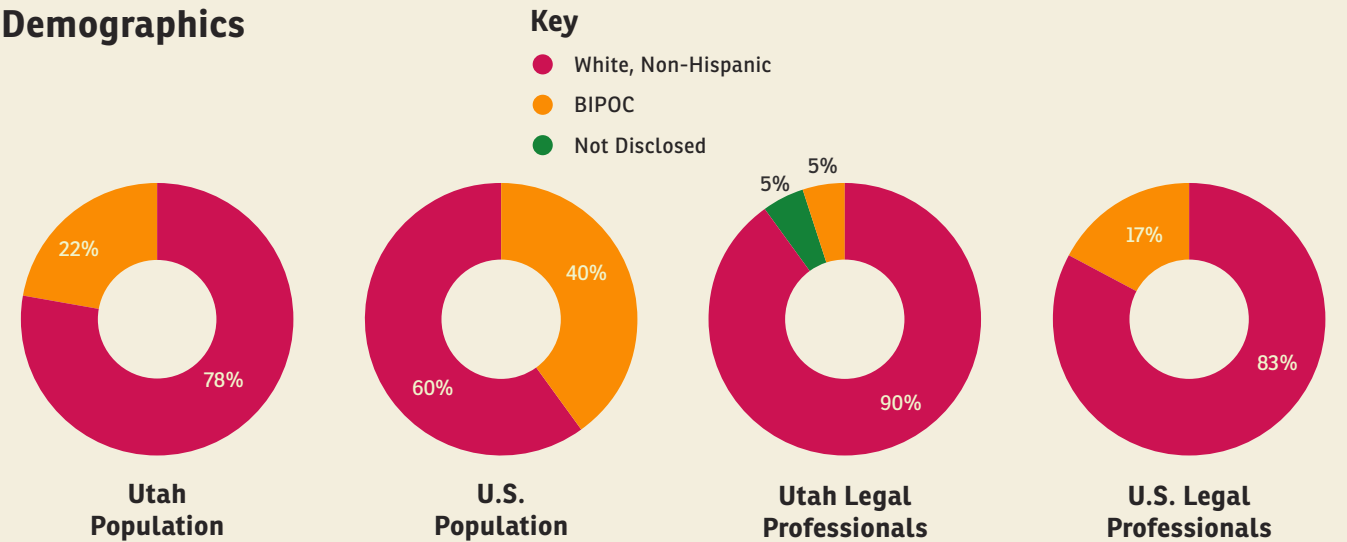
29 2020 ABA 509 Disclosures Total JD Enrollment for law schools in Arizona, Colorado, Idaho, Iowa, Oregon, Minnesota, Maine, Montana, Nevada, New Mexico, Vermont, Washington and Wyoming. Data from all ABA-accredited law schools in each state were aggregated. Concordia University School of Law data was from a 2019 ABA 509 disclosure because no 2020 disclosure was available. While most of the states analyzed are in the region, other states were included because of similar statewide population demographics.

30 Vernellia R. Randall, *The Whitest Law Schools - 2021* (Mar. 8, 2021), <https://racism.org/2021-law-school-rankings?start=4>.

BIPOC make up **less than 5%** of equity partner positions regardless of the size of the legal employer, and representation decreases from associate to equity partner.



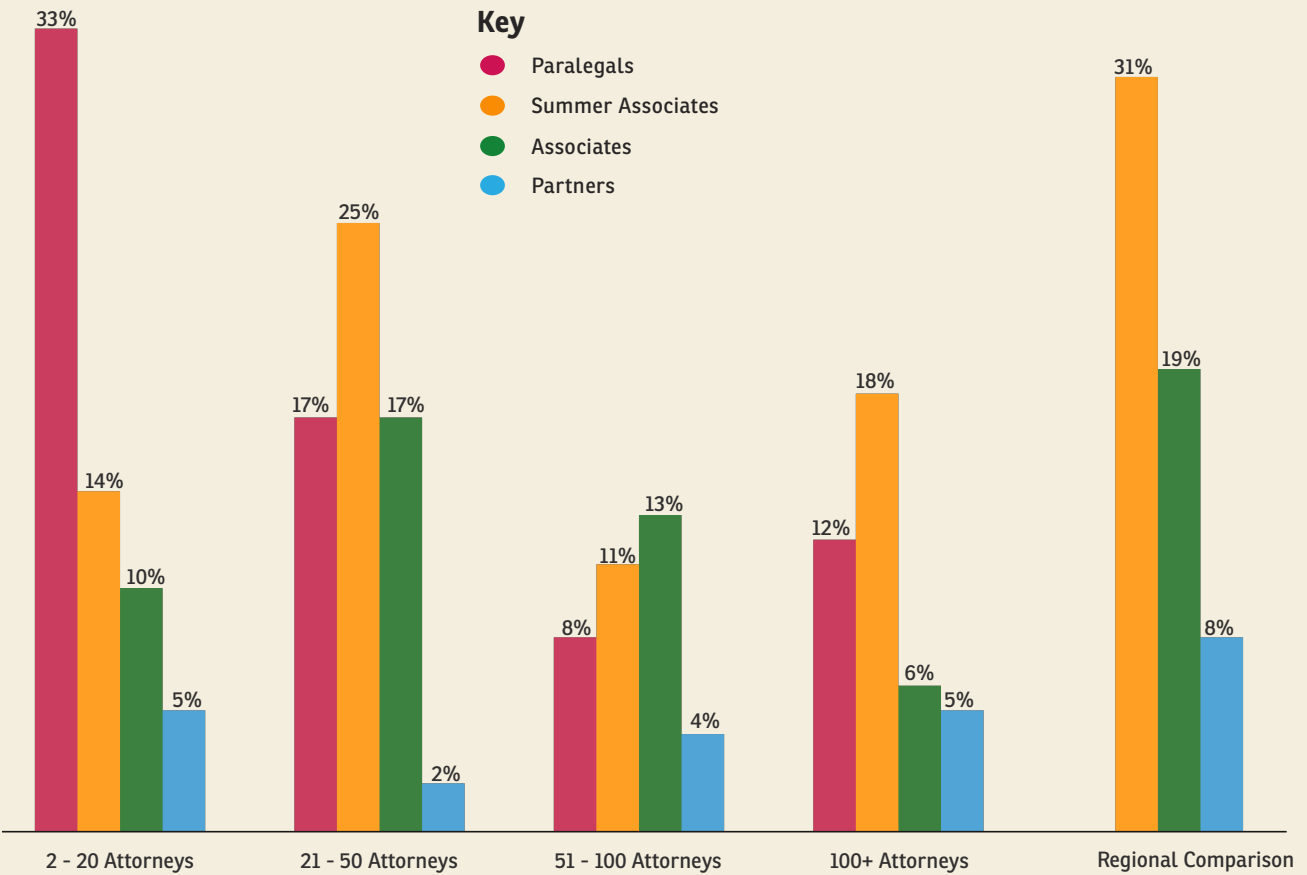
Demographics



Source: U.S. Census V2019, 2020 NALP Survey, Utah State Bar 2020 Member Survey

Note: UCLI and NALP use U.S. Census categories for collecting data on race and ethnicity but the Utah Bar does not. The Census has a reporting category for “White/Non-hispanic” but the Utah Bar lists this option as “Caucasian,” which can be selected along with another racial or ethnic identifier. In the 2020 Utah State Bar Member Survey, 90% of respondents identified as “Caucasian,” while 9% identified as members of a racially and ethnically underrepresented group, and a further 5% preferred not to disclose. 2020 Utah State Bar Member Survey.

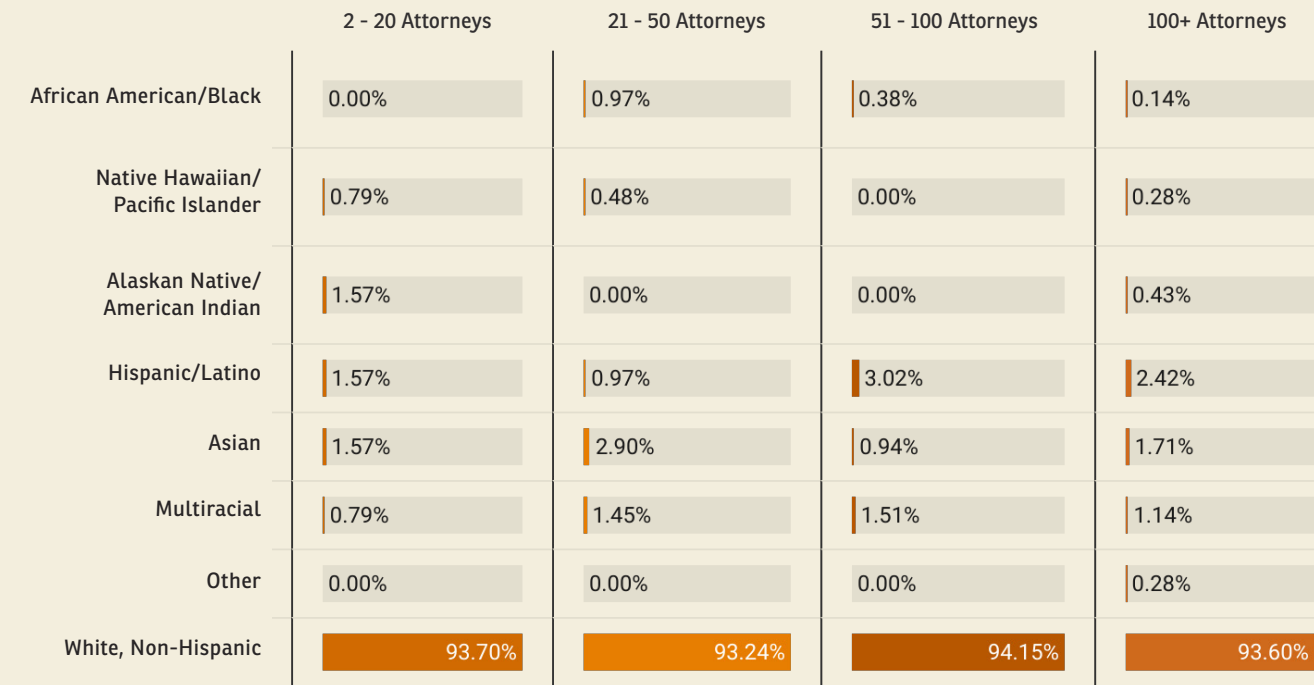
BIPOC Representation by Employer Size



Source: UCLI 2020 Certification Program Survey, 2020 NALP Report on Diversity

BIPOC Attorney Representation by Employer Size

Figures represent percentages of attorneys based on UCLI 2020 survey data.

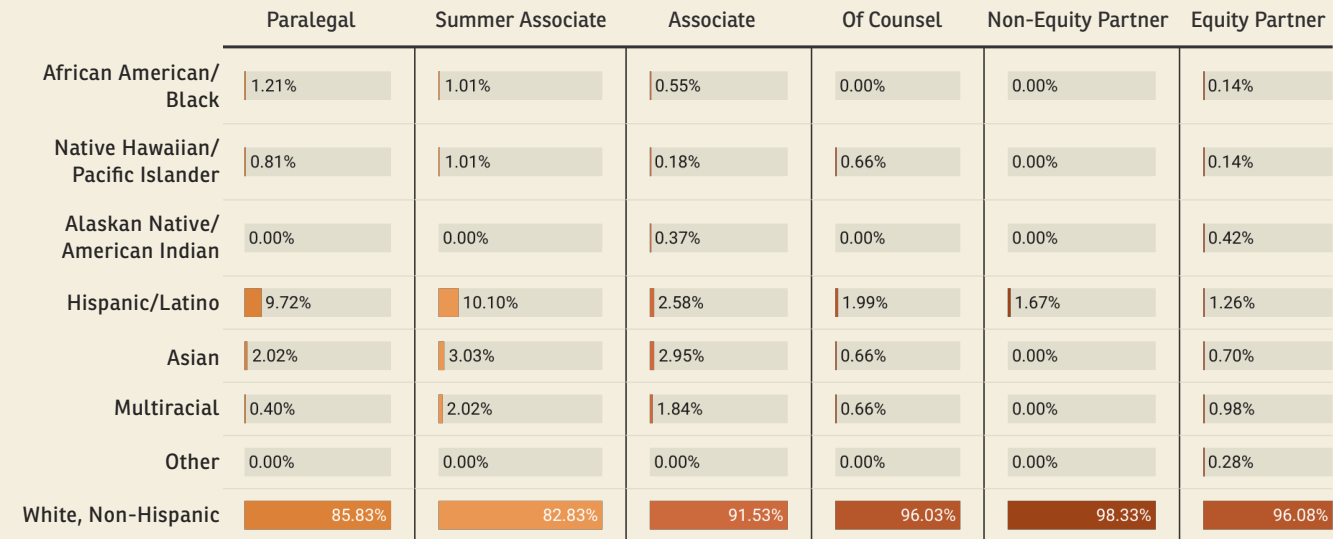


Source: UCLI 2020 Certification Program Survey

Note: "BIPOC" refers to race/ethnicity and includes census categories, including: Asian, Black or African American, Latinx, Native American or Alaska Native, Native Hawaiian or other Pacific Islander, and multiracial lawyers. References to racial and ethnic representation include these same census categories.

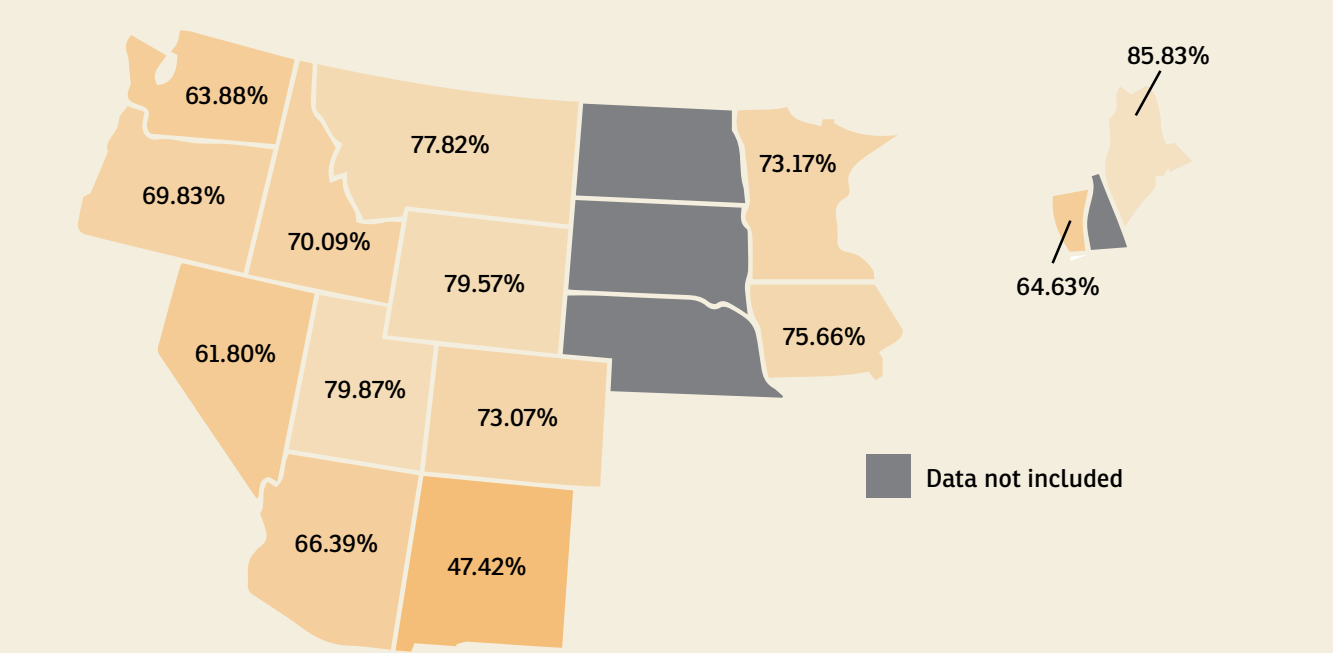
BIPOC Attorney Representation by Professional Role

Figures represent percentages of attorneys based on UCLI 2020 survey data.



Source: UCLI 2020 Certification Program Survey

Percent of White Law Students, 2019–2020



Source: ABA 509 Disclosures



# KEY FINDING #2

Women and men are hired as associates at similar rates but at each level of advancement women's proportional representation decreases as men's increases.

15

The UCLI survey found that the proportional representation of women decreased at every level of advancement in Utah's legal field. This finding is consistent with the robust data in the 2020 Women Lawyers of Utah report, Barriers to Advancement.<sup>31</sup> **Women are vastly overrepresented in paralegal positions, tend to be underrepresented in junior attorney positions, and are vastly underrepresented in senior attorney positions.** The Utah legal field's representation of women lags behind the region. Women make up roughly 1 out of every 4 partners at law firms in the region,<sup>32</sup> but the average among Utah law firms surveyed was roughly 1 in 6 (17%).<sup>33</sup> Utah is behind national law firms in reaching overall gender parity (29% women lawyers as opposed to 37% nationally).<sup>34</sup>

Although women make up only 29% of lawyers at surveyed employers, the vast majority of paralegals are women (approximately 90%). This disparity in representation of women between lawyers and paralegals tracks with national data.<sup>35</sup> On average at law firms, women made up 44% of summer associates

31 The Women Lawyers of Utah study found that "Utah women comprise . . . only 12% of law firm partners." Women Lawyers of Utah, *Barriers to Advancement: Findings from the 2020 Study of Gender & Racial Bias in Utah's Legal Profession* 6 (2020), [https://initiative.utahwomenlawyers.org/images/pdfs-doc/Barriers-to-Advancement-WomenLawyersUtah\\_single-page-12-14-2020.pdf](https://initiative.utahwomenlawyers.org/images/pdfs-doc/Barriers-to-Advancement-WomenLawyersUtah_single-page-12-14-2020.pdf).

32 NALP 2020 Report on Diversity (considering firms in Denver, Phoenix, and Portland).

33 UCLI 2020 Certification Program Survey. *But see Barriers to Advancement*, 2020 WLU Survey, at 6 (finding that "Utah women comprise . . . only 12% of law firm partners," or roughly 1 in 8). When factoring in government offices, the number of women in partner-type roles rises to about 25%. For partners in traditional private law firms, that number is approximately 17%.

34 2020 Utah State Bar Survey, at 99.

35 George Anders, *Women are 87% of Paralegals, but Only 23% of Law-Firm Partners. Let's Find Out Why.*, LINKEDIN (Feb. 5, 2019), <https://www.linkedin.com/pulse/women-87-paralegals-only-23-law-firm-partners-lets-find-george-anders> ("[W]omen account for 87% of paralegals and 40% of entry-level associates . . . in corporate law or commercial litigation.").

and only 17% of partners.<sup>36</sup> The UCLI survey did not collect information that allowed for conclusions about women of color ("WOC") and other intersectional identities, but other industries have found that similar trends are even more significant for WOC.<sup>37</sup>

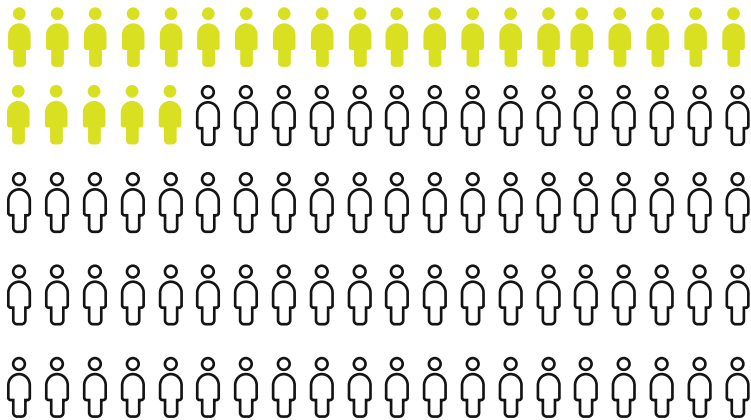
There is no clear trend in the UCLI data for gender representation and employer size. As the Gender Representation by Employer chart indicates, smaller

employers hired greater percentages of women summer associates (71%) compared to the other-sized employers (41%, 50%, 39% at employers sized 21–50, 51–100, and 100+, respectively) and regional employers (60%), but large employers had more women in partner positions (32%) than smaller and medium-sized employers (22%, 14%, 23% at employers sized 2–20, 21–50, and 51–100, respectively).<sup>38</sup>

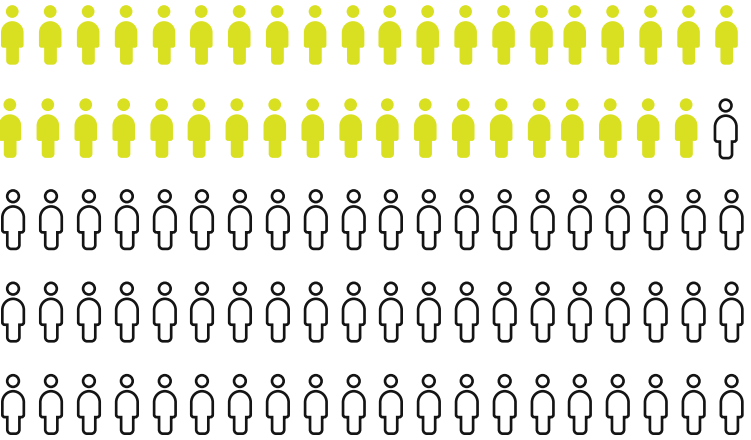
Women make up **39% of Associates** and **25% of Partners** (Equity and Non-equity)

Key  
● Women  
○ Men

## Partners



## Associates



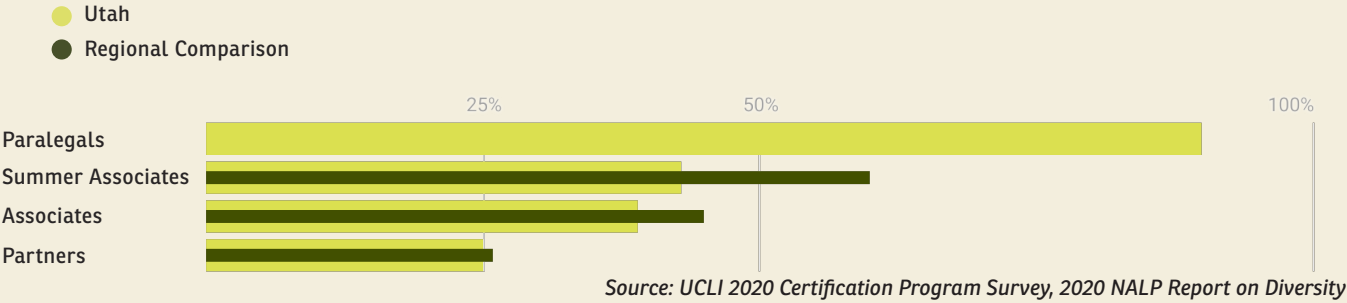
36 This includes both equity and non-equity partners.

37 MCKINSEY & COMPANY & LEAN IN, *WOMEN IN THE WORKPLACE* 2020 9 (2020) ("For every 100 men promoted to manager, only 85 women were promoted--and this gap was even larger for some women: Only 58 Black women and 71 Latinas were promoted.").

38 The percentage of women in partner roles drops to 17% when including data only from private law firms.

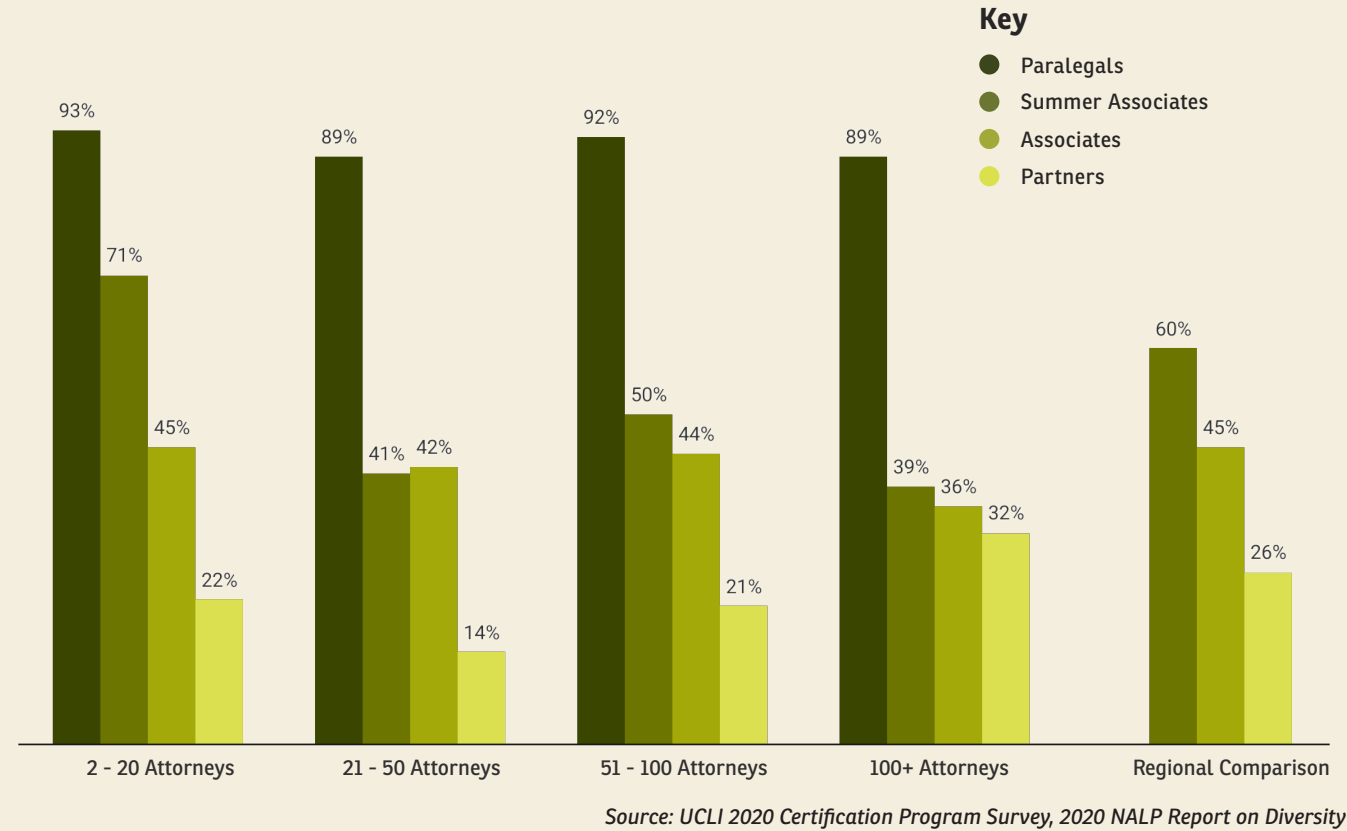
16

Gender Representation by Role in Utah's Legal Profession



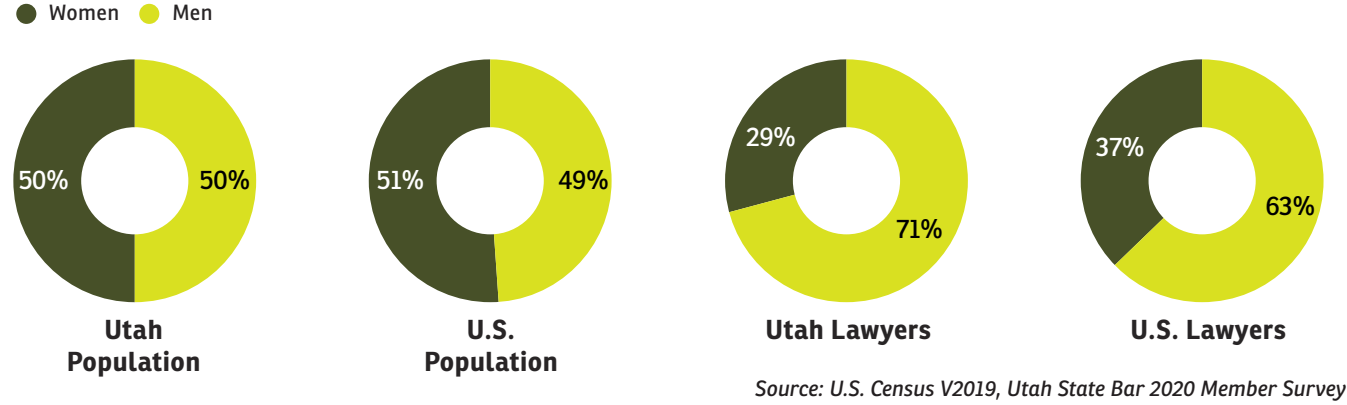
Gender Representation by Employer Size

Figures represent the percentage of women in the designated role.



Note: Regional data for paralegals was unavailable.

Gender Representation in Utah v. Nationwide



# KEY FINDING #3

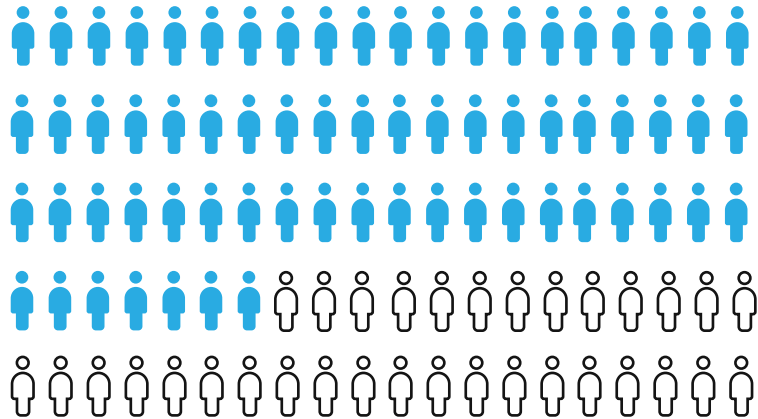
Women are twice as likely as men to have part-time schedules.

On average, **67% of part-time attorneys at surveyed employers in Utah were women and 33% were men.**<sup>39</sup> The UCLI data suggests that there are greater percentages of women working part-time at large (100+ attorneys) and small (2–20 attorneys) employers than at medium-sized ones. The percentages of women working part-time at medium-sized employers (55%) was similar to the regional comparison (58%), which was near parity with men.<sup>40</sup>

## Part-time Attorneys

### Key

- Women
- Men



Many employers may offer part-time policies as a well-intentioned option, but research suggests taking advantage of these policies can be a double-edged sword for women. Mothers in particular face additional barriers when they opt for part-time schedules. Some mothers may face a “flexibility stigma,” or bias triggered by mothers taking parental leave or working part-time or flexible

39 Part-time attorneys are predominantly women, but only about 10% of attorneys in Utah work part-time. See *Barriers to Advancement*, 2020 WLU Survey, at 26 (finding that “12% of women work part-time compared to only 7% of men”).

40 The data does not address the reason causing this disparity. The relatively small number of employer respondents means even one or two employers with outliers in each size category could meaningfully influence the data. One possible explanation for the difference is that several medium-sized employers in Utah serve large tech clients, who may favor legal representation with the kinds of schedule flexibility policies tech giants are known for. This may encourage both men and women to have part-time schedules at similar rates.

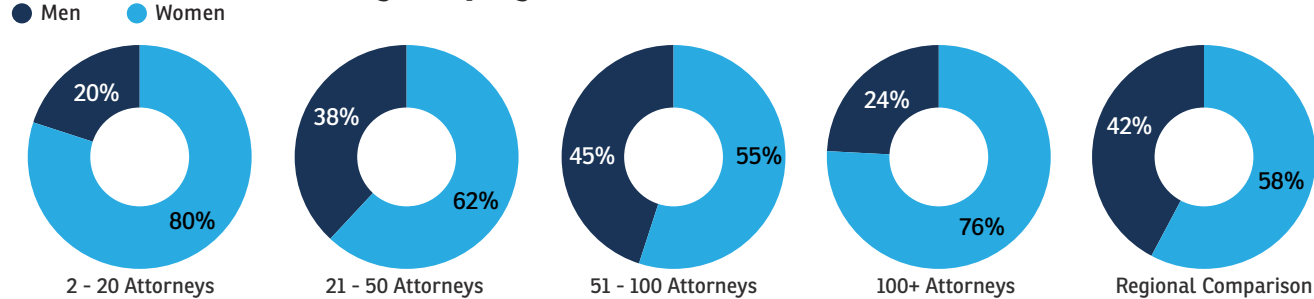
schedules, after they return.”<sup>41</sup> This “flexibility stigma” disproportionately impacts women, as partially evidenced by a higher percentage of men than women “believ[ing] that they could ask for flexible work arrangements without hurting their career.”<sup>42</sup>

“A well-meaning [male] attorney told me he would ‘hurry and get approval’ of an agreement from his client ‘so that we can wrap this up and get you back home to your kids.’ I do not have kids, and lived alone at the time. I worked a normal 40–60 hour work week just like any other young professional, but he assumed I was . . . part-time[.]”

A recent survey of policies at Utah companies found that entry-level, part-time schedule policies were common, but those policies were much less common in higher level positions.<sup>43</sup> A metaphor used to describe the loss of women from a field before they reach representative proportions in senior roles is called the “leaky pipeline.”<sup>44</sup> The lack of these schedule flexibility policies for senior roles may contribute to a leaky pipeline because it may pressure women “to forgo promotions or leave their companies rather than transition to full-time roles.”<sup>45</sup>

Schedule flexibility is especially relevant given effects of the COVID-19 pandemic. Many Utah women “left the workforce completely,” “took a leave of absence,” or “downshifted” . . . from full-time to part-time work” in 2020.<sup>46</sup>

## Part-time Schedules by Employer Size



Source: UCLI 2020 Certification Program Survey, NALP 2020 Report on Diversity

41 Commission on Women in the Profession & MCCA, *You Can’t Change What You Can’t See: Interrupting Racial & Gender Bias in the Legal Profession*, ABA 34 (2018).

42 *Id.* at 35 (2018) (32% of women of color and 36% of white women, but 50% of white men).

43 Utah Women & Leadership Project, *Flexible And Family-Friendly Policies at Utah’s “Best Places To Work”*, UTAH STATE UNIV. 2 (Dec. 2, 2020).

44 Renate Ysseldyk, Katharine H. Greenaway, Elena Hassinger, Sarah Zutrauen, Jana Lintz, Maya P. Bhatia, Margaret Frye, Else Starkenburg & Vera Tai, *A Leak in the Academic Pipeline: Identity and Health Among Postdoctoral Women*, 10 FRONTIERS IN PSYCH. 1, 1 (2019).

45 See *infra* Best Practice #4, “Create and uniformly apply flexible work policies”; Utah Women & Leadership Project, *Flexible and Family-Friendly Policies at Utah’s “Best Places to Work”*, UTAH STATE UNIV. 2 (Dec. 2, 2020).

46 Becky Jacobs, *Thousands of Utah Women Left the Workplace During COVID-19 Pandemic, New Report Shows*, SALT LAKE TRIB. (Apr. 6, 2021, 6:00 AM), [https://www.sltrib.com/news/2021/04/06/thousands-utah-women-left/?utm\\_source=Salt+Lake+Tribune&utm\\_campaign=364758e45b-topstories040721&utm\\_medium=email&utm\\_term=0\\_dc2415ff28-364758e45b-12372133](https://www.sltrib.com/news/2021/04/06/thousands-utah-women-left/?utm_source=Salt+Lake+Tribune&utm_campaign=364758e45b-topstories040721&utm_medium=email&utm_term=0_dc2415ff28-364758e45b-12372133); Utah Women & Leadership Project, *The Impact of COVID-19 on Utah Women and Work: Changes, Burnout, & Hope*, UTAH STATE UNIV. 2 (Apr. 6, 2021).

# KEY FINDING #4

The percentage of LGBTQ+ attorneys in Utah is 3.5 times lower than the percentage of LGBTQ+ attorneys nationally.

Employers in **the UCLI survey reported that less than 1% of lawyers identify as LGBTQ+**, suggesting LGBTQ+ attorneys are either underrepresented in

Utah's legal community or are not comfortable outing themselves as LGBTQ+ in the workplace. The national rate of LGBTQ+ lawyers is more than three times higher than in the survey data (2.99% vs. 0.85%).<sup>47</sup> In Utah, LGBTQ+ people make up 4.5% of the population. Nationally, the rate is 3.7%.

"When I first started practicing law . . . I was a closeted lesbian as I was afraid to come out for fear I would be fired, or not hired. [T]hat is one reason I formed [my] own firm."

In its 2020 report, NALP relied on national data on LGBTQ+ law students to conclude "that there is still the potential for additional growth in the presence of LGBTQ[+] associates."<sup>48</sup> It is not clear if this is the case in Utah because law school data on LGBTQ+ students in the state is not available. Nationally, there seems to be a decrease in LGBTQ+ attorney representation at higher levels of seniority in law offices. LGBTQ+ lawyers nationally made up 7.68% of summer associates, but only 4.66% of associates and 2.19% of partners.<sup>49</sup>

The UCLI survey may not fully capture accurate data about the LBGTQ+

47 NALP 2020 Report, *supra* note 5, at 10 (reporting 2.99% of U.S. attorneys identify as LGBTQ+). Figures compare NALP data to data obtained in the UCLI 2020 Certification Program Survey.

48 *Id.* at 6.

49 *Id.* at 10.

community, which may be driven in part by survey design.<sup>50</sup> An employer survey accounts for all attorneys at a firm but the quality of responses may be somewhat lower because employers are encouraged not to make assumptions. Not every LGBTQ+ attorney may feel comfortable revealing their sexual orientation or gender identity in the workplace.<sup>51</sup>

"[S]ome people I worked with in the legal profession were strongly biased against those who behaved in ways they considered immoral [including the] LGBTQ+ community . . . but they felt like these biases were a good thing."

One reason employers may not be aware of LGBTQ+ attorneys in their offices is that LGBTQ+ attorneys may be concerned that their career mobility will be limited by discrimination, homophobia, and hostility in the workplace.<sup>52</sup> An essential way to help LGBTQ+ attorneys to feel comfortable sharing their identities, if they so choose, is to focus on building supportive and inclusive cultures within law firms and other legal offices.<sup>53</sup>

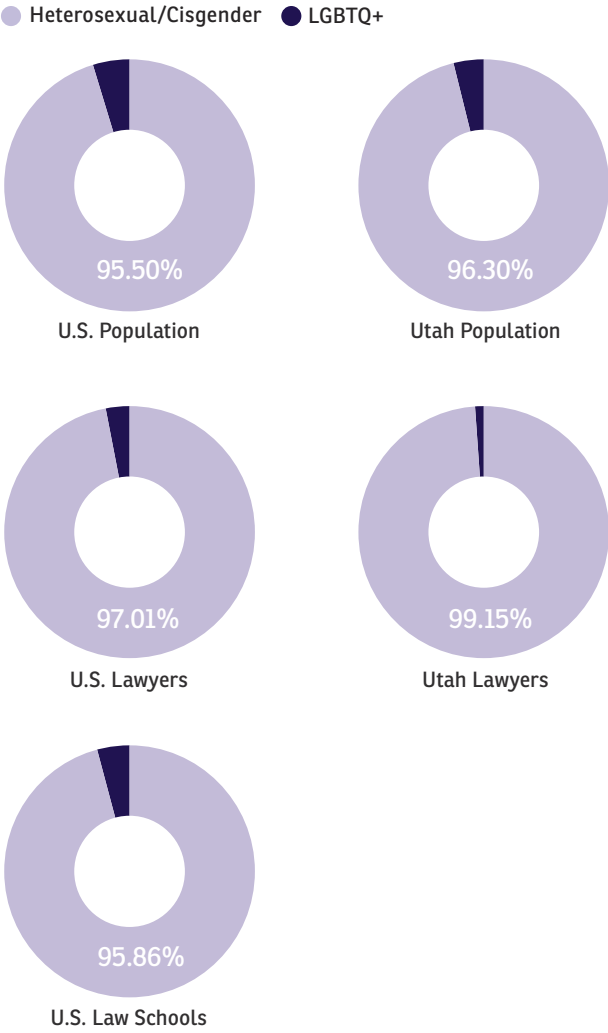
50 The Women Lawyers of Utah survey found a much higher percentage of LGBTQ+ attorneys than the UCLI survey, supporting the conclusion that employers in the UCLI survey were not able to provide a full picture of this population. *Barriers to Advancement*, 2020 WLU Survey, at 32 ("Among survey respondents, 4% of man-identified and 8% of women-identified respondents are lesbian, gay or bisexual. Only two respondents identified as transgender or non-binary.").

51 According to the Human Rights Campaign, approximately 50% of LGBTQ+ persons are closeted at work out of fear that they might be stereotyped, lose connections or relationships with coworkers, or make others feel uncomfortable. *A Workplace Divided: Understanding the Climate for LGBTQ Workers Nationwide*, HUM. RTS. CAMPAIGN 6 (2018).

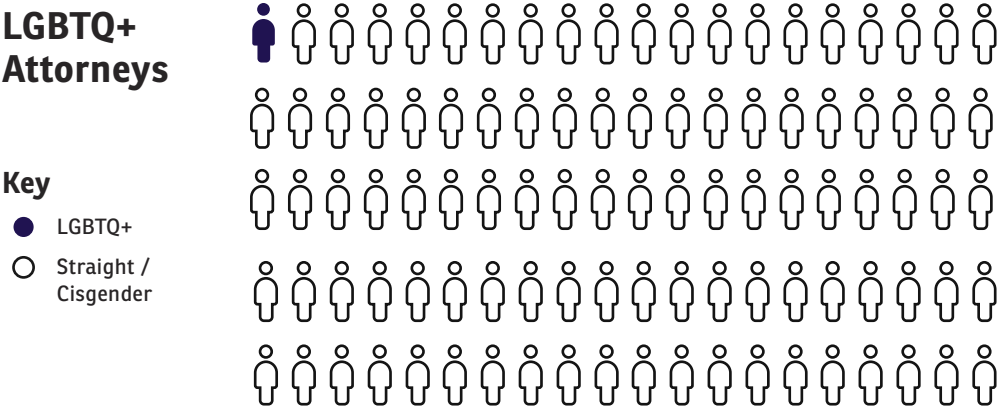
52 Paul Willis, *Witnesses on the Periphery: Young Lesbian, Gay Bisexual and Queer Employees Witnessing Homophobic Exchanges in Australian Workplaces*, 65(12) HUM. RELS. 1589, 1604–06 (2012) ("In male-dominated work environments, homophobic expressions were described as overtly hostile in tone towards LGBQ sexualities. . . . The research highlights the requirement for equal opportunities and diversity policies to extend beyond recognition of targeted discrimination and to recognize the nuanced ways in which homophobic beliefs and heteronormative attitudes can be woven throughout some work cultures.").

53 Nick Drydakis, *Sexual Orientation Discrimination in the United Kingdom's Labor Market: A Field Experiment*, 52 HUM. RELS. 1787, 1787 (2015) ("[H]eteronormative discourse . . . negatively affects the lived experiences of gay and lesbian job applicants . . . . Studies suggest that good relations between employers and employees increase the openness of sexual orientation minorities, improve job attitudes and benefit firms as a whole because teamwork is an important aspect of firm productivity and success.").

## LGBTQ+ Representation



Source: 2019 Williams Institute LGBT Demographic Data, 2019 NALP Diversity Report, UCLI 2020 Certification Program Survey



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# LGBTQ+ INCLUSION IS LINKED TO POSITIVE BUSINESS OUTCOMES

Workplaces that are inclusive for the LGBTQ+ community are linked to “greater job commitment, improved workplace relationships, increased job satisfaction, . . . [and] improved health outcomes among LGBT[Q+] employees[.]”<sup>54</sup> Policies that support LGBTQ+ people give businesses greater ability to recruit the highest-quality candidates<sup>55</sup> and can encourage employees to stay with an employer rather than looking elsewhere.<sup>56</sup>

<sup>54</sup> M.V. Lee Badgett, Laura E. Durso, Angeliki Kastanis & Christy Mallory, *The Business Impact of LGBT-Supportive Workplace Policies*, WILLIAMS INST. 1 (May 2013).

<sup>55</sup> Shaun Pichler, Janell Blazovich, Kirsten A. Cook, Janet M. Huston & William R. Strawser, *Do LGBT-Supportive Corporate Policies Enhance Firm Performance?*, ACCT. FAC. PUBL'NS 29 (2016) (“LGBT-supportive policies are important, in part, because they maximize a firm’s ability to attract highly skilled labor in tight labor markets.”).

<sup>56</sup> M.V. Lee Badgett et al., *The Business Impact of LGBT-Supportive Workplace Policies*, at 1.

24



# KEY FINDING #5

The percentage of attorneys in Utah with a disability is less than 1% of all attorneys, but is almost six times lower than other employed Utahns with a disability.

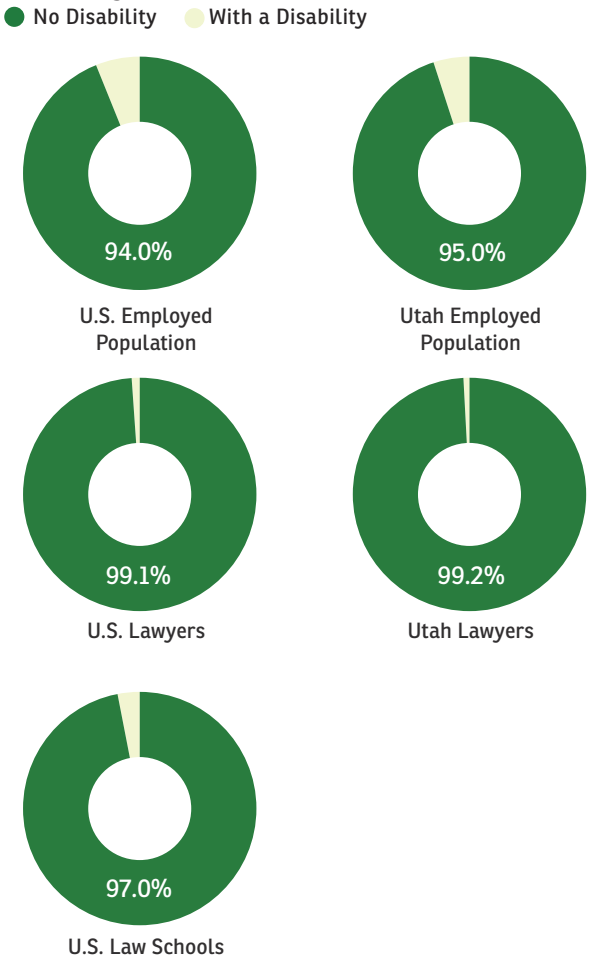
Employers in the UCLI survey reported that less than 1% of lawyers have a disability, which is similar to national trends. **The percentage of employed Utahns with a disability (5%) was almost six times higher than the number of Utah lawyers with a disability (0.8%),** suggesting that the legal field is particularly hard to break into for those with a disability or that attorneys prefer not to disclose their disabilities to their employer. Although these numbers are similar to those collected at the national level, it is likely the data reported in the survey do not fully capture the number of attorneys with a disability in Utah. Collecting data at the firm- or office-level is helpful in accounting for every attorney at each employer, but it may overlook those who choose not to share their disability status at work. Some attorneys may have disabilities that are obvious to their employer, such as partial paralysis, missing extremities, deafness, or blindness. Other attorneys may have less visible disabilities, such as neurological learning disorders (e.g., ADHD), hearing loss, arthritis, or chronic depression.

The legal field can be particularly challenging to break into and navigate for attorneys with a disability. For those with physical disabilities, navigating law offices or court rooms may require thinking ahead or building extra time into transit and arrival plans. This additional barrier placed on attorneys with disabilities takes away from time they could be spending on their careers, families, and other interests.<sup>57</sup> A lack of flexible hours, accessible

or assistive technology,<sup>58</sup> and other reasonable accommodations<sup>59</sup> may unfairly disadvantage attorneys with neurological and other disabilities. Supporting attorneys with disabilities means creating cultures where seeking accommodations is encouraged, not ignored or criticized. Creating a culture and environment that supports attorneys with disabilities also supports attorneys without a disability. Many of the accommodations that benefit those with lifelong disabilities are beneficial to those without disabilities, those experiencing temporary physical or cognitive disability, or those with undiagnosed disabilities.

This shared benefit applies to potential clients as much as it does current and future employees.

## Disability Representation



Source: Census Bureau ACS, 1-Year 2019, 2019 NALP Diversity Report, UCLI 2020 Certification Program Survey

Note: Data on students with disabilities at Utah law schools is not available. Nationally, approximately 4% of law students report having a disability, but that data from the NALP 2020 Report on Diversity is caveated as incomplete. See NALP 2020 Report on Diversity, at 9.

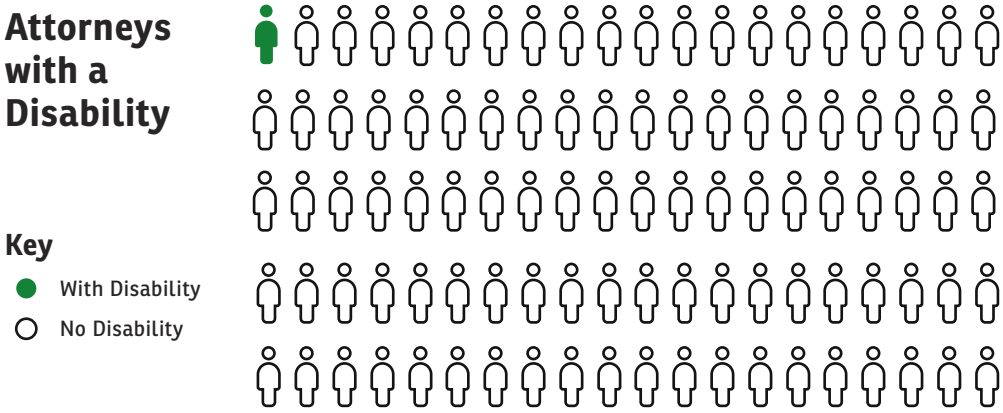
"A past coworker . . . was fired because he 'just couldn't handle' the caseload and was taking too much time off. [T]his attorney inherited a . . . very difficult [caseload which] involved a lot of travel. . . . When he began experiencing significant symptoms of mental illness, he asked management for help (more manpower, more resources, a more realistic caseload, etc.). He was told to take time to 'take care of himself' but was not given any other help. Soon he was fired for taking too much time off."

<sup>57</sup> In addition, these attorneys may also be disadvantaged when it comes to activities incidental to career advancement. At some legal employers, there may be barriers to advancement if a physically disabled attorney is unable to go golfing with the partners or a blind attorney is unable to quickly identify and greet others in the work hallway. Acknowledging these difficulties, and making advancement based on more objective criteria, would benefit disabled attorneys. See *infra* Best Practice #3, Advancement; see also Kim Forde-Mazrui, *Dear Prospective Blind Law Student*, in LEAD ON: LAWYERS WITH DISABILITIES SHARE THEIR INSIGHTS 31 (Rebecca S. Williford, Carrie A. Basas, & Stephanie L. Enyart eds., 2011).

<sup>58</sup> "Assistive technologies (AT) are devices or equipment that can be used to help a person with a disability fully engage in life activities. AT's can help enhance functional independence and make daily living tasks easier through the use of aids that help a person travel, communicate with others, learn, work, and participate in social and recreational activities. An example of an assistive technology can be anything from a low-tech device, such as a magnifying glass, to a high tech device, such as a special computer that talks and helps someone communicate." Disability and Health Information for People with Disabilities, CDC, <https://www.cdc.gov/ncbddd/disabilityandhealth/people.html> (last visited Apr. 24, 2021).

<sup>59</sup> For a fact sheet on reasonable accommodations see ADA National Network, *Reasonable Accommodations in the Workplace*, <https://adata.org/factsheet/reasonable-accommodations-workplace> (last visited Apr. 19, 2021).

Attorneys with disabilities make up **less than 1%** of all attorneys reported in the survey data.



# KEY FINDING #6

Respondent employers in Utah have fewer DEI and schedule flexibility policies than regional legal employers.

In the UCLI survey, 56% of employers reported at least one formal policy aimed at promoting diversity, equity, or inclusion. Of the employers reporting at least one formal policy, 86% had at least four of these kinds of DEI policies. **Nearly 44% of employers of varying sizes reported not having any of the DEI policies** listed in the UCLI survey. Policies were categorized in two ways: (1) those promoting diversity, equity, and inclusion; and, (2) those providing flexibility to employees in planning work schedules. Policies promoting DEI included those intended to ensure:

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- Equitable access to clients
- Quality work assignments
- Leadership and committee appointments
- Diverse marketing efforts
- Equitable pay
- Equitable opportunity for promotion

In addition to the DEI policies mentioned and depicted above, 68% of legal employers reported having a written policy or strategy regarding the recruitment and hiring of attorneys or paralegals who would be considered diverse by their gender, ethnic or racial background, or LGBTQ+ or disability status. Examples of additional policies and strategies include:

- Actively seeking out diverse candidates
- Considering candidates "based on their qualifications and experience, regardless of gender, race, orientation, age, religion, and/or disability"
- Striving to have at least 30% of applicants be from diverse backgrounds
- Having a diverse recruitment panel
- Focusing on recruiting at law schools that have a more diverse student

- body population,
- Incentivizing associates to participate in affinity groups within the legal community
  - Having experienced attorneys sponsor/mentor junior associates and law students
  - Assigning tangible roles to leaders at the firm in DEI Plans with accountability for meeting certain diversity responsibilities
  - Retaining a recruiter if certain targets aren't met for attracting diverse candidates

Approximately 40% of legal employers reported having a policy that required inclusion of at least one diverse attorney in all decisions related to hiring and promotion but only 27% reported having a policy to include a diverse attorney in decisions related to compensation. About 62% of legal employers reported holding mandatory diversity and inclusion training, usually annually.

Roughly 73% of legal employers reported having a formal mentorship program to assist with the training and advancement of newly hired attorneys. Examples of formal mentoring programs include:

- Patterning a program off the Utah Bar New Lawyer Training Program
- Assigning a senior attorney to a junior attorney as a contact for communication and resources
- Planning bimonthly lunch & learns
- Incentivizing mentorship by compensating participation in mentorship activities by the hour
- Requiring monthly check-ins from the mentoring attorney
- Having a formal associate training program
- Empowering the senior attorney to assist in the kinds of work assigned to the junior associate

- Encouraging mentors to facilitate introductions and professional relationships between the junior associate and other experienced attorneys

One particularly important category of DEI policies are those that give employees flexibility in work scheduling. Hiring and retaining diverse talent means fostering a work environment that accepts a diverse approach to the profession. Examples of policies that promote schedule flexibility include:

- Paid maternity leave
- Paid paternity leave
- Paid parental leave
- Flex-time scheduling
- Part-time scheduling

Of the employers in the UCLI survey, 92% reported having at least one formal policy aimed at promoting flexibility in work scheduling. Of those, **76% had policies for paid maternity leave and 60% had policies for paid paternity leave** (this includes those who had a policy for general parental leave) for associate attorneys and above. Of the surveyed employers, 20% had no policy concerning paid parental leave of any kind.

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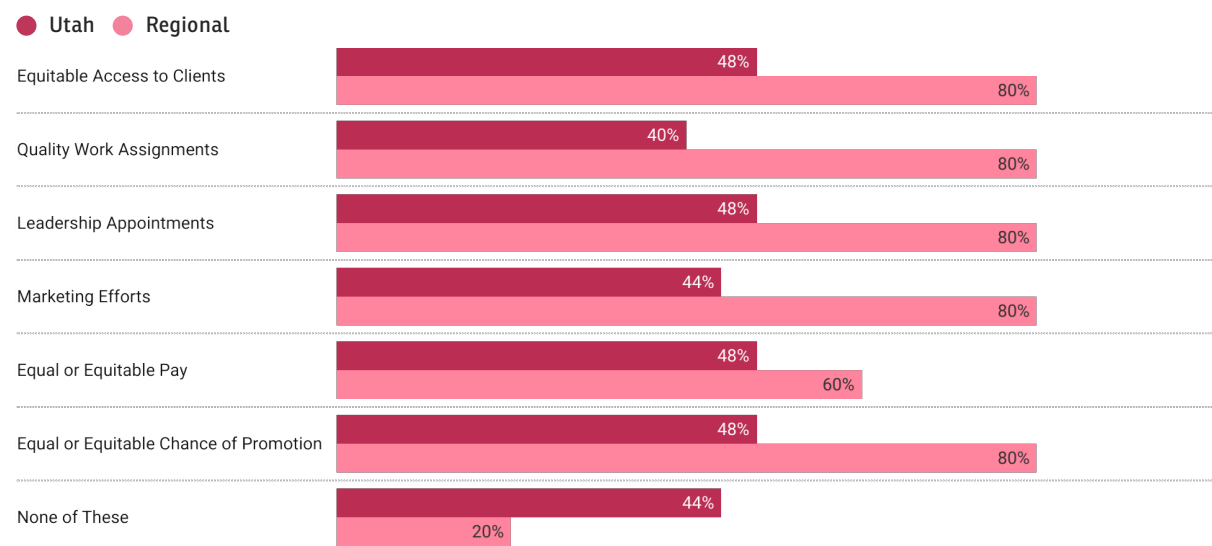
"I have female friends who have left firms due to inequitable treatment at larger firms, or lack of policies for [accommodating] having kids."

The first set of policies listed above provide a look into what Utah legal employers are doing to improve diversity, equity, and inclusion in their workplaces.

The second set represents policies intended to provide attorneys with greater autonomy through schedule flexibility. While it is clear that many Utah legal employers care deeply about addressing these issues, there is still a need for many employers to adopt these types of policies. Even so, adding DEI and schedule flexibility policies will not magically solve a lack of diversity. The UCLI data makes clear the need for a more comprehensive, effective, sustained approach.

Diversity, Equity, & Inclusion Policies in Utah vs. Regionally

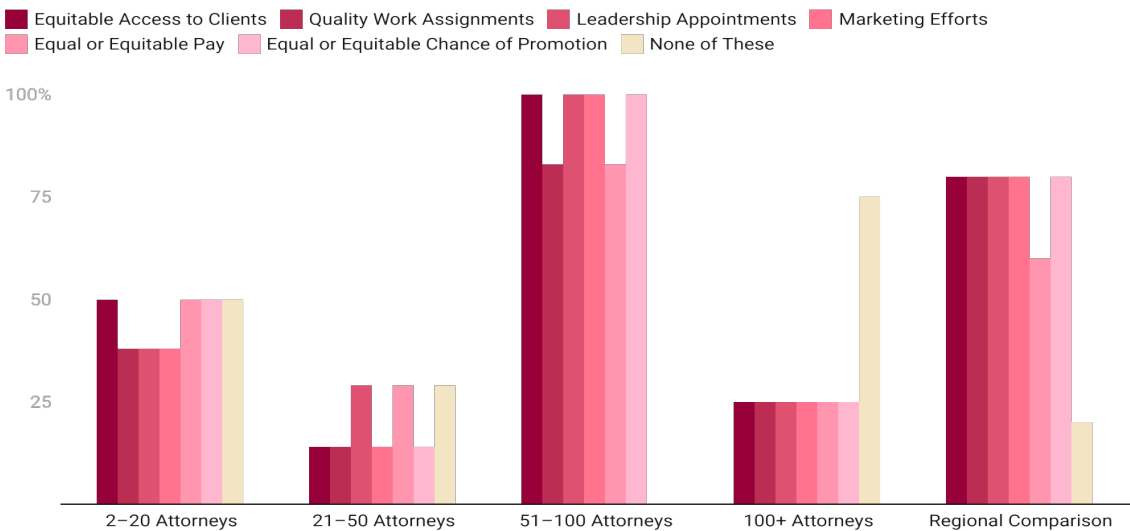
Figures represent the percentage of Utah legal employers with certain DEI policies.



Source: UCLI 2020 Certification Program Survey

Diversity, Equity, & Inclusion Policies by Firm Size

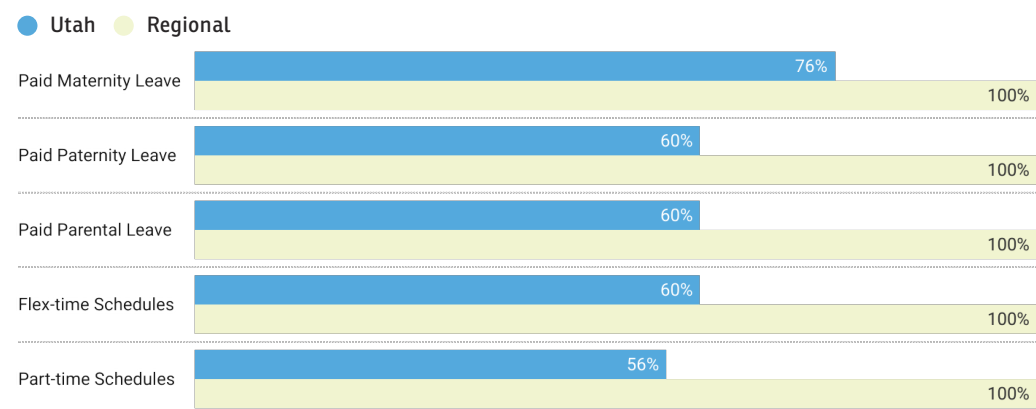
Figures represent the percentage of firms that have adopted policies promoting diversity, equity, and inclusion.



Source: UCLI 2020 Certification Program Survey

Work Schedule Policies in Utah vs. Regionally

Figures represent the percentage of Utah legal employers with certain work schedule policies.

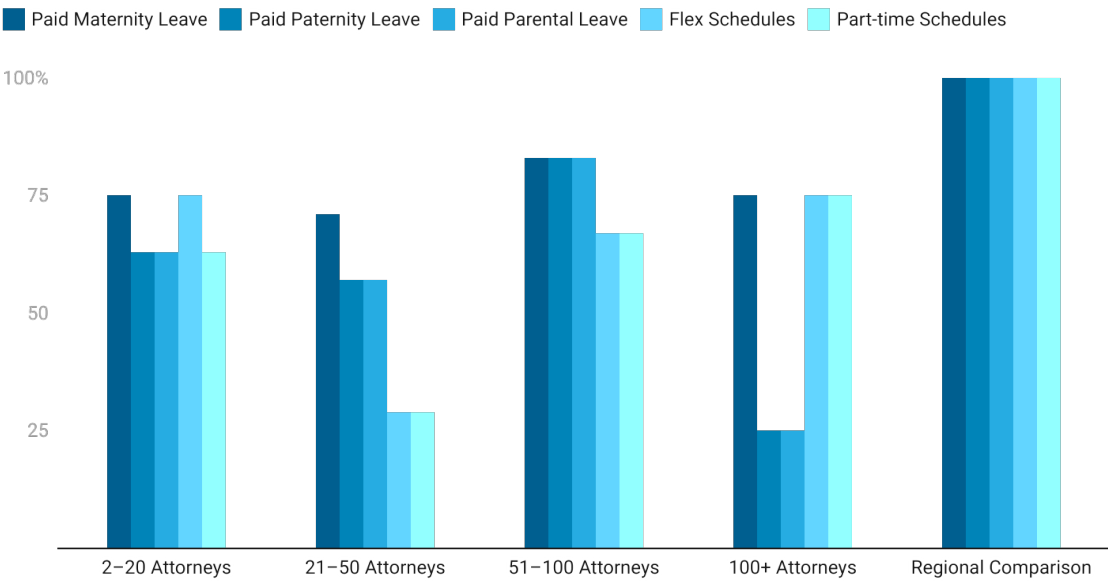


Source: UCLI 2020 Certification Program Survey

Note: Flex-time scheduling generally involves a policy that does not require employees to request formal time off or change of schedule to alter starting or ending times to the work day.

Work Schedule Policies by Firm Size

Figures represent the percentage of firms that have adopted policies for promoting schedule flexibility for associate attorneys and above.



Source: UCLI 2020 Certification Program Survey

Note: Regional comparisons for these graphics are based on firms that have offices both in Utah and out of state. Five legal employers reported this kind of data. Legal employers who reported firm-wide policies, ranged in size from a handful of attorneys to over 100 attorneys. Of legal employers predominantly operating in Utah, four employers of 100+ attorneys submitted data, six employers of 51–100 attorneys, eight employers of 21–50 attorneys, and nine employers of 2–20 attorneys.

# BEST PRACTICES FOR LEGAL EMPLOYERS

In light of the Key Findings described above, this section examines how employers can move the needle<sup>60</sup> on diversity, equity, and inclusion and provides a broad overview of some of those best practices.<sup>61</sup> In addressing the diversity issues captured in the Key Findings, legal employers should be prepared to:

- Commit to long-term change driven by data collection and analysis
- Reassess the effectiveness of one-off diversity training
- Adopt policies that support diversity in recruitment, hiring, retention, and advancement

The vast majority of research on DEI in the legal profession focuses on big law firms. Thus, some of the ideas presented here may not be as feasible for or responsive to concerns of government offices, legal non-profits, in-house offices, or small- and medium-sized firms. Legal employers are best positioned to be aware of the challenges of their individual organizations. The recommendations below offer a range of potential solutions for legal employers.

<sup>60</sup> For an example of an organization experimenting with research-based and data-driven ways to achieve aggressive, measurable diversity goals, see Move the Needle Fund, <https://www.mtnfund2025.com/>.

<sup>61</sup> The best practices included in this report are not intended to be all inclusive but instead represent a selection of best practices, focusing on those that seemed most relevant in light of the survey responses analyzed in this report.




# BEST PRACTICE #1


## Commit to long-term change and data collection.

Increasing diversity, equity, and inclusion within organizations is a challenge. Legal employers can recognize the challenge and rise to face it over the long term rather than making one or two short-term efforts and losing momentum. Sustainable and effective change requires systemic interventions and solutions applied consistently over time.<sup>62</sup>

"My employer and the bar have had numerous speakers and trainings on [d]iversity/[i]nclusion topics, but it stops there. They do not go further to actually implement changes to combat the ableism, sexism, and other 'isms.'"

 **LEADERSHIP COMMITMENT IS KEY.** The first step to making long-term change is commitment from leadership. The success of attorneys from underrepresented groups is an organization-wide issue. Often, these attorneys are tapped to serve on diversity committees and in other such roles.<sup>63</sup> Although underrepresented voices are important in these settings, delegating this obligation to these attorneys *alone* can overburden and further marginalize them, decreasing the success of DEI efforts.<sup>64</sup> Focusing

on underrepresented attorneys' success as an organization-wide goal can lessen these burdens and emphasize an employer's commitment to DEI.

 **SUPPORT STATEWIDE DATA COLLECTION.** The UCLI survey is the start of an ongoing effort to track diversity in Utah's legal profession.


62 Diversity Science, *Creating Sustainable Approaches to Diversity*, <https://www.diversityscience.org/sustainable-diversity-training/> (last visited Apr. 25, 2021).

63 ABA, *VISIBLE INVISIBILITY*, at 38 ("[M]any firms overburdened women of color through diversity committee assignments, recruiting assignments and other such efforts that marginalize the diversity efforts and place women of color in conflicting roles that compete for limited time.").


64 *Id.*

Without collecting demographic data on the profession, it is impossible to track whether the approaches that employers are taking are working. This demographic information is valuable both in tracking how employers are doing and in providing a comparison that individual employers can use to see how they are doing in relation to their peers.

The 2020 Utah State Bar Member Survey also provides valuable information about the legal profession in Utah.<sup>65</sup> However, because the survey is conducted only every ten years (roughly), it shows long-term change but there is not always up-to-date data available. The Utah State Bar survey collects data directly from attorneys rather than through employers. The Women Lawyers of Utah's survey also provides demographic and qualitative data from in-depth interviews.<sup>66</sup> Each of these data collection efforts adds value and helps us answer a range of questions about Utah's legal profession. Supporting statewide data collection and participating in UCLI's Certification Program are important to track how the profession is changing, where progress has stagnated, and how the Utah legal profession compares to the profession nationally.

 **COLLECT INTERNAL DATA AND FOCUS ON POLICIES THAT CAN BE TRACKED.** The implementation of any DEI goal is a step in the right direction, but DEI initiatives are much more

valuable when aimed at goals that can be tracked.<sup>67</sup> Tracking outcomes allows employers to focus their efforts on the most effective interventions. Some potential policies were identified in the UCLI survey and are featured in Key Finding #6. Sample policies can also be found on [UCLI's website](#). In addition to those policies, Best Practices #2 and #3 feature some potential changes that legal employers can implement to reach DEI goals.

 **BUILD A WORKPLACE CULTURE THAT IS SAFE AND INCLUSIVE TO ENCOURAGE OPENNESS IN REPORTING.** Psychological safety thrives in "a climate in which people are comfortable expressing and being themselves."<sup>68</sup> In this type of climate, lawyers should feel free to share concerns and mistakes without fearing embarrassment and to speak up without being shamed.<sup>69</sup>

Creating a psychologically safe workplace culture in an industry like law is inherently difficult. American legal culture is often adversarial and competitive in nature. Many lawyers report constant feelings of being "on edge or at risk of professional harm."<sup>70</sup> Many lawyers are taught that success means never asking for help.<sup>71</sup> This becomes dangerous when stress reaches a high, while confidence reaches a low.

65 2020 Utah State Bar Member Survey.

66 Women Lawyers of Utah, *Barriers to Advancement: Findings from the 2020 Study of Gender & Racial Bias in Utah's Legal Profession* (2020).

67 Benjamin Harkin, Thomas L. Webb, Betty P. I. Chang, Andrew Prestwich, Mark Connor, Ian Kellar, Yael Benn & Paschal Sheeran, *Does Monitoring Goal Progress Promote Goal Attainment? A Meta-Analysis of the Experimental Evidence*, 142(2) PSYCH. BULL. 198, 198 (2015).

68 Heidi K. Brown, *Fear and Lawyering: Create a work culture of 'psychological safety' that encourages taking intellectual and creative risks*, ABA J., (May 1, 2019, 2:15 AM CDT), <https://www.abajournal.com/magazine/article/fear-lawyering-psychological-safety> (quoting Professor Amy Edmondson).

69 *Id.*

70 *Id.*

71 Anne M. Brafford, *Well-being Toolkit for Lawyers and Legal Employers*, ABA 81 (2018), [https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/lscolap\\_well-being\\_toolkit\\_for\\_lawyers\\_legal\\_employers.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lscolap_well-being_toolkit_for_lawyers_legal_employers.pdf) ("If you're like a lot of lawyers, you may be hesitant to acknowledge you need support, let alone to ask for it. When compared to the general population, lawyers are far more autonomous and achievement-oriented.").

Legal employers can promote psychological safety by taking a more humane approach to feedback and mentorship of young lawyers.<sup>72</sup> Laura Delizonna's article, *High-Performing Teams Need Psychological Safety. Here's How to Create It*, recommends the following steps to create a psychologically safe workplace:

- Use collaborative, rather than adversarial, approaches to solve problems.<sup>73</sup>
- Promote empathy to enhance vulnerability and bonding, and create trust.<sup>74</sup>
- Anticipate reactions and plan ahead.<sup>75</sup> When a conflict is inevitable, strategically anticipate potential reactions and create responses that avoid possible perceptions of attacking a colleague's identity or ego.<sup>76</sup>
- Exchange blame for curiosity.<sup>77</sup> Blame breeds defensiveness. Instead, adopt a learning mindset and refrain from making assumptions.
- After a difficult exchange, ask a colleague for feedback on delivery and describe the strategy employed to deal with the problem. This provides a clear way forward for navigating conflict with specific people in the future.<sup>78</sup>

<sup>72</sup> Laura Delizonna, *High-Performing Teams Need Psychological Safety. Here's How to Create It*, HARV. BUS. REV. 3 (Aug. 24, 2017), [https://pluribus-europe.com/docs/HBR\\_Psychological%20safety.pdf](https://pluribus-europe.com/docs/HBR_Psychological%20safety.pdf).

<sup>73</sup> *Id.* at 3.

<sup>74</sup> *Id.* at 3.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 4.

<sup>77</sup> *Id.*

<sup>78</sup> Pon Staff, *Conflict Management: Intervening in Workplace Conflict*, HARV. L. PROG. ON NEGOTIATION DAILY BLOG (Dec. 17, 2020), <https://www.pon.harvard.edu/daily/conflict-resolution/conflict-management-intervening-in-workplace-conflict/>.

# BEST PRACTICE #2

## Reassess DEI training.

The UCLI survey and informal reflections yielded insight into the cultures at Utah’s legal workplaces. Many of the diverse lawyers and law students who shared reflections on their experiences described instances of bias and microaggressions. Diversity training is a common method employers use to prevent bias and microaggressions in the workplace.

This section defines and discusses bias and microaggressions. It then briefly explains why diversity training on its own—and implicit bias training, in particular—is often less effective than intended. Finally, it proposes a few practices that may increase the effectiveness of diversity training in concert with other organization-wide DEI initiatives.

“I live this experience every day as a woman in this field. I have been called both ‘mousy’ and ‘aggressive.’ I have been called ‘sweetheart’ and ‘sugar’ and asked to fetch coffee. A prominent defense attorney asked me if I was my colleague’s ‘secretary’ when we were both prosecutors screening a case.”

**BIAS.** “Bias can harm the mental and physical health of employees who experience it, interfere with their performance and engagement, and undermine their professional development and promotion.”<sup>79</sup> Implicit bias “refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.”<sup>80</sup> While explicit bias can be understood as conscious bias where “the person is very clear about his or her feelings and attitudes, and related behaviors are conducted

with intent,”<sup>81</sup> explicit bias can also manifest as negative actions, or simply “subtle exclusion.”<sup>82</sup>

Biases are harmful in part because they assume things that may not be true. Research-based

“I went to law school in Alabama and briefly practiced there under supervision. My experience was that the sexism and racism and ableism seemed more overt in Alabama . . . . However, it was far more diverse, and there were a lot of folks who recognized the problems and were trying to make progress to solve them. In Utah, I see the same biases, but they are more implicit, disguised, and unspoken. Folks seem comfortable, and don’t seem to want to admit that these issues exist.”

examples of bias and stereotyping in the workplace are countless: when women talk on the phone, it is often labeled as “gossip” while men engaging in the same behavior are seen as being productive.<sup>83</sup> The “angry Black woman stereotype” assumes Black women are angry when engaging in the same behavior perceived as strength in white women.<sup>84</sup> Men may be seen as passionate while women are seen as emotional for the same behaviors.<sup>85</sup>

The quote to the left also helps describe the difference between implicit and explicit bias.

**MICROAGGRESSIONS.** Microaggressions are comments or actions that subtly and often unknowingly manifest a person’s prejudice towards any underrepresented group of people.<sup>86</sup> Microaggressions create barriers to diversity, equity, and inclusion goals. Generally, microaggressions do so by affecting several pieces of a lawyer’s identity, ranging from fulfillment in their work to their physical<sup>87</sup> and mental health.<sup>88</sup> Since the pioneering article on microaggressions was published in 2007<sup>89</sup> research has shown that microaggressions have negative effects for those who experience them.<sup>90</sup>

79 Evelyn R. Carter, Ivuoma N. Onyeador, & Neil A. Lewis, Jr., *Developing & Delivering Effective Anti-bias Training: Challenges & Recommendations*, 6(1) BEHAV. SCI. & POL’Y 57, 58 (2020) (internal citations omitted).

80 Kirwan Institute for the Study of Race and Ethnicity, *Understanding Implicit Bias* (May 29, 2012), <https://kirwaninstitute.osu.edu/article/understanding-implicit-bias>.

81 National Center for Cultural Competence at Georgetown University, *Conscious & Unconscious Biases in Health Care*, <https://nccc.georgetown.edu/bias/module-3/1.php> (last visited Apr. 19, 2021).

82 *Id.*

83 Madeline E. Heilman, *Description and Prescription: How Gender Stereotypes Prevent Women’s Ascent up the Organizational Ladder*, 57(4) J. Soc. Iss. 657, 662 (2001) (“[A] behavior such as frequent phone conversation is a good deal more likely to be seen as slacking off for a woman but productive for a man.”).

84 Roxanne A. Donovan, *Tough or Tender: (Dis)Similarities in White College Students’ Perceptions of Black and White Women*, 35(3) PSYCH. WOMEN Q. 458, 466 (2011).

85 Stephanie A. Shields, *Passionate Men, Emotional Women: Psychology Constructs Gender Difference in the Late 19th Century*, 10(2) HIST. PSYCH. 92, 92 (2007).

86 Merriam-Webster, *Definition of microaggression*, <https://www.merriam-webster.com/dictionary/microaggression> (last visited Apr. 19, 2021).

87 Kathryn Freeman Anderson & Jessie K. Finch, *The Role of Racial Microaggressions, Stress, and Acculturation in Understanding Latino Health Outcomes in the USA*, 9 RACE & SOC. PROBS. 218, 231 (2017).

88 Pfizer, *Understanding Racial Microaggression and Its Effect on Mental Health* (Aug. 26, 2020), <https://www.pfizer.com/news/hot-topics/understanding-racial-microaggression-and-its-effect-on-mental-health>.

89 Derald Wing Sue, Christina M. Capodilupo, Gina C. Torino, Jennifer M. Bucceri, Aisha M. B. Holder, Kevin L. Nadal & Marta Esquilin, *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, 62 AM. PSYCH. 271 (2007).

90 Keon West, *Testing Hypersensitive Responses: Ethnic Minorities Are Not More Sensitive to Microaggressions, They Just Experience Them More Frequently*, 45(11) PERSONALITY & SOC. PSYCH. BULL. 1619, 1619–20 (Nov. 2019) (“[R]eported experiences of microaggressions predict many detrimental outcomes, including negative affect, lower self-esteem, identity confusion, stress, depression, and suicidal ideation. These effects

"I can't even count the number of times clients, opposing parties, and ATTORNEYS I HAVE HAD CASES AGAINST have mistaken me for a receptionist/support staff, despite the fact that my office door has a plaque on it that clearly states my name and "Staff Attorney" on it."

"One of my male coworkers and I often brainstorm together. VERY often, I will tell him about an idea I have, and in a subsequent meeting with our supervisors and management, he will express the idea as if it were his own. He does not 'credit' me with the idea, even as people around us are telling him how clever he is for thinking of it, etc. When I confronted him and told him it upset me, he told me I was sensitive, and attempted to gaslight me[.]"

have been found for a variety of ethnic minorities (e.g., people of Black, Latinx, and Asian identity) and for some sexual minorities (e.g., bisexuals).") (internal citations omitted).

91 *Id.* at 1626.

92 *Id.* at 1619.

93 *Id.* at 1619.

94 *Id.* at 1619.

95 *Id.* at 1619.

96 Commission on Women in the Profession & MCCA, *You Can't Change What You Can't See*, at 18–19 ("[O]nly 7% of white male lawyers reported this happening to them, compared with 58% of women lawyers of color. . . . Half of white women also reported being mistaken for administrative (or custodial) staff. Men of color also reported experiencing this happening at a much higher level than white men: 30% vs. 7%.").

Such effects include "identity confusion," "lower self-esteem," "suicidal ideation," and "depression."<sup>91</sup> Experts have outlined three distinct types of microaggressions:

- Microassault: When a person uses derogatory language and "derogatory terms" to describe members of underrepresented groups<sup>92</sup>
- Microinsult: When a person "question[s] how a person [from an underrepresented group] obtained a particular job or place"<sup>93</sup>
- Microinvalidation: When a person "den[ies] others' experiences of [discrimination] or accus[es] them of being oversensitive"<sup>94</sup>

Microaggressions differ from implicit biases discussed in the previous section in that implicit biases are the internal unconscious prejudice someone holds against a diverse person, while a microaggression is the outward manifestation of this bias. Microaggressions can be comments, actions, or even nonverbal and environmental.<sup>95</sup>

A recent Workplace Experiences Survey found that women and people of color are often mistaken for administrative or janitorial staff—"[b]ecause of the automatic association of lawyers with majority men, lawyers from other groups are much more likely to be mistaken for or viewed as less than a lawyer."<sup>96</sup> This is an example of a microaggression. This microaggression sends women and BIPOC the

message that they do not belong as an attorney and reflects the implicit assumption that diverse people are not expected to reach certain levels of professional status. Attorneys and law students surveyed for this report, along with respondents to the Women Lawyers of Utah survey,<sup>97</sup> consistently reported such experiences.

**HOW TO PLAN EFFECTIVE DIVERSITY TRAININGS.** In recent years, many organizations have turned to diversity training as a solution to problems with diversity, equity, and inclusion, including problems resulting from biases and microaggressions. Some employers may conduct their own training while others rely on outside support. No matter the approach, employers should ensure that the training is an effective use of employer time and money, by considering, among other things, the following:



**Use a Holistic Approach to Improving Diversity.** Companies spend roughly \$8 billion annually on diversity training.<sup>98</sup> Another estimate suggests that "20% of U.S. organizations offer training specifically aimed at combating implicit bias, a number expected to grow to 50% in the future."<sup>99</sup> One case study concluded that implicit bias training fails to create a "sense of urgency" around addressing such biases, fails to create a vision for "what the organization will look like after changes are made," and fails to leave participants with "actionable takeaways."<sup>100</sup> To remedy these, the study suggested that employers could create individual accountability, for instance by requiring employees to explain how they

97 *Barriers to Advancement*, 2020 WLU Survey, at 17.

98 Ivuoma N. Onyeador, Sa-kiera T. J. Hudson & Neil A. Lewis, Jr., *Moving Beyond Implicit Bias Training: Policy Insights for Increasing Organizational Diversity*, 8 POL'Y INSIGHTS FROM THE BEHAV. & BRAIN SCIS. 19, 20 (2021) ("By some estimates, companies spend US\$8 billion on diversity training (Lipman, 2018), often focusing on unconscious or implicit bias.").

99 Joanne Lipman, *How Diversity Training Infuriates Men and Fails Women*, TIME MAG. (Jan. 25, 2018) (referencing conversations the author has had with major corporations in making a prediction for the future of diversity training).

100 Olivia Nelson, *Potential For Progress: Implicit Bias Training's Journey To Making Change*, JOSEPH WHARTON SCHOLARS 11, 16, 22 (2017).

101 *Id.* at 25.

"While negotiating over the phone[,] opposing counsel directed me to 'be a good little girl and settle the case.' In addition to that comment opposing counsel implied that I was not good at simple math and said, 'Here, let me just do that math for you.'"

"I did a trial advocacy training out of state and while my male counterpart on the fake trial was given extensive feedback both positive and constructive, the only feedback I was given was that I should wear 'pantyhose' and wear more 'feminine shoes.'"

have acted on the training in regular employee evaluations.<sup>101</sup>

Emerging research also suggests employers should implement a holistic approach by supplementing diversity training with a range of other efforts, such as those identified in this report or available through UCLI. Effective DEI education must be ongoing.



Some creative ways to incorporate DEI include “courses, a book club, an email drip, guest speakers, celebrations, or creating 20-minute microlearning courses on different topics surrounding diversity and inclusion, and dole them out month over month.”<sup>102</sup> Training alone is not enough to change employee behavior but can be effective when used in combination with other practices, including those identified in Best Practice #3.



**Incentivize Training.** At some firms, diversity training is optional, at others, it is mandatory. Research suggests that voluntary training only reduces implicit bias in the short-term.<sup>103</sup> This may be because those who need the training the most would not attend if it were optional.<sup>104</sup> Making training mandatory may be overall more effective in promoting behavior change and learning,<sup>105</sup> but it may have negative consequences on those who did not want to attend.<sup>106</sup> To bridge the gap between those who do not want to attend training but may benefit most from attending, employers may consider offering incentives to encourage attendance. Incentives can be as simple as gift cards, “catered lunch”<sup>107</sup>, or as substantial as time off, or monetary bonuses.<sup>108</sup>



**Focus on Your Audience.** Firms should determine the target audience for training. Given that some people are more likely to be subject to bias than others, research recommends employing a scaffolded approach.<sup>109</sup> In addition to a broader, more comprehensive firmwide DEI strategy, a scaffolded approach requires tailoring the content of diversity training to meet the specific needs of the audience.<sup>110</sup> Some employees may respond more favorably to an education-based diversity training session, while others may benefit from a feedback session or an internal mentorship program.

<sup>102</sup> Stephanie Escande, *The Principles Behind Successful Anti-Bias and Diversity Training*, 360LEARNING BLOG, <https://360learning.com/blog/successful-anti-bias-diversity-training/> (last visited Apr. 20, 2021).

<sup>103</sup> Frank Dobbin & Alexandra Kalev, *Why Doesn't Diversity Training Work?*, 10(2) ANTHROPOLOGY NOW 48, 49 (Sept. 2018).

<sup>104</sup> Evelyn R. Carter et al., *Developing & Delivering Effective Anti-Bias Training*, at 63 (“[W]hen training is voluntary, behavioral learning is significantly lower compared with when training is mandatory.”).

<sup>105</sup> *Id.* (finding that voluntary training “undermines other outcomes that may be important for long-term change, such as behavioral learning”) (internal citations omitted).

<sup>106</sup> Carol T. Kulik, Molly B. Pepper, Lorian Roberson & Sharon K. Parker, *The Rich Get Richer: Predicting Participation in Voluntary Diversity Training*, 28(6) J. ORG. BEHAV. 1, 3 (2007).

<sup>107</sup> Escande, *The Principles Behind Successful Anti-Bias and Diversity Training*.

<sup>108</sup> *Id.*

<sup>109</sup> Evelyn R. Carter et al., *Developing & Delivering Effective Anti-Bias Training*, at 62.

<sup>110</sup> *Id.* at 65.



# BEST PRACTICE #3

Support diversity and equity in recruitment, hiring, retention, and advancement.

The UCLI survey shows that diversity in representation decreases as seniority increases within legal organizations. BIPOC and women are present to a greater extent in entry-level positions but their representation decreases at each level of advancement within the profession. To address this decrease in representation, legal employers should work to increase diversity at each step of the advancement process, including recruiting, hiring retention, and advancement. The practices below can help.

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**Broaden recruitment strategies.** Changing recruitment strategies can lead to more diverse hiring. Posting open positions in the same places and hoping for a more diverse applicant pool is not effective. Instead, post positions in a wide variety of places, including websites and job boards specifically focused on people who are diverse in ways that are underrepresented among your current staff.<sup>111</sup> In addition, posting open positions to a regional audience may attract a more diverse pool of legal talent.<sup>112</sup>



**Be intentional about job posting language.** The language used in job postings can lead to fewer diverse applicants. Avoiding gender-coded words is important because more traditionally masculine words such as “competitive,” or “dominate” can “dissuade women from applying . . . because they cue that women do not belong.”<sup>113</sup> In addition, ensuring that all the listed requirements are must-have qualifications, rather than a wishlist of preferred qualifications can attract more women applicants.<sup>114</sup>

111 Marilyn Cavicchia, *Is There Bias in Your Hiring Process? Removing It Takes Diligence, Self-Awareness*, 40(6) BAR LEADER (July–Aug. 2016), [https://www.americanbar.org/groups/bar\\_services/publications/bar\\_leader/2015-16/july-august/is-there-bias-in-your-hiring-process/](https://www.americanbar.org/groups/bar_services/publications/bar_leader/2015-16/july-august/is-there-bias-in-your-hiring-process/).  
112 See *supra* Key Finding #1, noting greater racial diversity in the region than in the Utah survey respondent pool.  
113 Danielle Gaucher, Justin Friesen & Aaron C. Kay, *Evidence That Gendered Wording in Job Advertisements Exists and Sustains Gender Inequality*, 101 J. PERSONALITY & SOC. PSYCH. 109, 110, 120 (2011).  
114 Tara Sophia Mohr, *Why Women Don't Apply for Jobs Unless They're 100% Qualified*, HARV. BUS. REV.



**Reconsider the resume and cover letter.** To encourage diverse talent to apply, employers can reassess the materials applicants are required to submit.<sup>115</sup> Studies have shown that applications with “white” names are more likely to make it through the application process than identical applications with “non-white” names.<sup>116</sup>

One way to avoid potential bias is to “blind” the initial selection process by having someone who isn’t involved in the hiring decisions remove names and other identifying information from applications prior to reviewing them.<sup>117</sup> Although removing names can help address bias,<sup>118</sup> there is potential that other information on resumes “can be used to infer someone’s racial or ethnic background.”<sup>119</sup> For instance, an applicant’s address can be used as a proxy for race and graduation years can lead to an inference about candidate age.<sup>120</sup>

To ensure a truly blind initial selection process, employers can also consider whether the benefits of

resumes outweigh their potential for bias. Instead of requiring a resume, it may be more valuable to assess applicants’ writing or research skills directly or to require applicants to answer specific questions that are relevant to the position.<sup>121</sup>



**Interview more diverse candidates.** Including diverse candidates in the interview pool can lead to more diverse hiring. At first glance, this may appear to conflict somewhat with the goal of selecting candidates to interview through a blind process. However, the two can work in concert. If, after reviewing applications blindly and selecting candidates, the applicants selected for interviews lack diversity, this can indicate that the process was not truly blind or that more effort is required to attract a broader applicant pool. “If only one woman is included in the finalist pool, the statistical possibility of her landing the job is zero.”<sup>122</sup> However, the likelihood of hiring a diverse candidate increases significantly when there are at least two diverse candidates in a hiring pool.<sup>123</sup>

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(Aug. 25, 2014), <https://hbr.org/2014/08/why-women-dont-apply-for-jobs-unless-theyre-100-qualified>.  
115 See, e.g., Richard Feloni, *Consumer-Goods Giant Unilever Has Been Hiring Employees Using Brain Games and Artificial Intelligence—and It’s a Huge Success*, BUS. INSIDER (June 28, 2017, 7:30 AM), <https://www.businessinsider.com/unilever-artificial-intelligence-hiring-process-2017-6> (highlighting Unilever’s focus on alternative application materials in place of traditional resumes and cover letters and the more diverse hiring through that process).  
116 Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, NAT’L BUREAU OF ECON. RSCH. 991, 991 (2003).  
117 Cavicchia, *Is There Bias in Your Hiring Process?*.  
118 Stefanie K. Johnson & Jessica F. Kirk, *Research: To Reduce Gender Bias, Anonymize Job Applications*, HARV. BUS. REV. (Mar. 5, 2020), <https://hbr.org/2020/03/research-to-reduce-gender-bias-anonymize-job-applications>; Ulf Rinne, *Anonymous Job Applications and Hiring Discrimination*, IZA WORLD LAB. 7 (Oct. 2018) (“Discrimination becomes impossible if recruiters are not given any information about characteristics that could indicate an applicant’s minority group status, as is the case with effectively implemented anonymous applications. However, if recruiters are able to draw indirect conclusions about race, ethnicity, or gender from the information supplied on not fully anonymous application forms, minority and other disadvantaged applicants could still face different, and in most cases lower, callback rates.”).  
119 Cavicchia, *Is There Bias in Your Hiring Process?*.  
120 *Id.*  
121 *Id.*  
122 MEERA DEO, UNEQUAL PROFESSION 22 (2020).  
123 Stefanie K. Johnson, David R. Hekman & Elsa T. Chan, *If There’s Only One Woman in Your Candidate Pool, There’s Statistically No Chance She’ll Be Hired*, HARV. BUS. REV. (Apr. 26, 2016), <https://hbr.org/2016/04/if-theres-only-one-woman-in-your-candidate-pool-theres-statistically-no-chance-shell-be-hired> (finding that “[t]he odds of hiring a [racial or ethnic] minority were 193.72 times greater if there were at least two minority candidates in the finalist pool” and “[t]he odds of hiring a woman were 79.14 times greater if there were at least two women



**Focus on objective criteria.** In the absence of clear, objective criteria, those making hiring or advancement decisions tend to use different criteria depending on the gender or race of the applicant.<sup>124</sup> For example, one study found that the criteria used in hiring decisions were redefined to justify hiring men over women.<sup>125</sup> The absence of clear criteria can occur at the recruitment, application review, and interviewing stages of hiring, as well as when making advancement decisions. Interviewing for “fit,” or looking for those who seem to fit in with existing employees, can stand in the way of hiring qualified, diverse talent.<sup>126</sup> Standardizing interview questions and setting clear priorities for candidate qualifications can allow employers to better compare various candidates for the same position.<sup>127</sup>



**Create and uniformly apply flexible work policies.** Research suggests that men are more likely than women to work flexible hours or take a lighter workload without asking permission first.<sup>128</sup> Men may be taking advantage of flexible schedules with minimal repercussions while women are experiencing negative repercussions by asking for flexibility.<sup>129</sup> One way to address this is to create policies that apply across the board. The

UCLI survey found that approximately 40 percent of employers surveyed did not have part-time or flex-time work policies in place.<sup>130</sup> When a flexible work policy automatically applies to everyone, there is less risk that discrepancies in who uses the policy will exist. Employers may consider encouraging legal professionals to work remotely when needed, take advantage of part-time options or adopt work schedules customized to their personal needs. These policies benefit working parents<sup>131</sup> and may also improve retention.<sup>132</sup>



**Reassess mentorship opportunities.** Attorneys rely on mentors to answer questions, receive challenging projects, receive introductions to other attorneys, and understand many other aspects of professional development. Some legal employers have formal mentor programs while others’ are informal. However, employers should work to recognize and address gaps in mentorship opportunities that disadvantage underrepresented groups.

Some mentorships develop organically, which gives individuals the flexibility to decide what type of mentorship is most effective for them. Many attorneys

agree that informal mentoring is more effective than formal mentoring.<sup>133</sup> However, informal mentorship programs can have significant negative repercussions when they leave out historically underrepresented groups. Evidence indicates that most people have the potential for “affinity bias,” which leads to mentors choosing mentees that look like themselves.<sup>134</sup> Because there are fewer BIPOC and women, and potentially fewer LGBTQ+ attorneys and attorneys with a disability, in the most senior legal positions, affinity bias results in fewer BIPOC, women (and potentially other marginalized groups) having meaningful mentorship opportunities. For example, an ABA study found that “[67%] of women [attorneys] of color . . . wanted more and better mentoring by senior attorneys and partners, as did 52% of men of color, 55% of white women, and 32% of white men.”<sup>135</sup>

Informal mentoring alone can lead to a self-perpetuating system where underrepresented groups are receiving fewer opportunities and, therefore, seen as less qualified when advancement decisions are made. The best approach to fostering meaningful mentorship opportunities includes both informal and formal mentoring.

Instituting an organized mentorship plan, supported by regular feedback from mentors and mentees, can also bridge the gap in mentorship quality and availability. Employers should therefore regularly

seek feedback from individual employees to determine their level of satisfaction with mentorship opportunities.

UCLI offers a formalized, evidence-based mentorship program that is intended to narrow this mentorship gap for law students entering the profession. UCLI’s program is focused on mentoring law students during their legal education and into the transition to careers as lawyers.<sup>136</sup> This program is valuable because it bridges the gap and focuses on students who may not have mentorship opportunities that develop organically. UCLI is also happy to work with legal employers seeking to develop their own internal mentoring programs that have the potential to reap similar benefits for practicing attorneys.



**Prevent tokenism by prioritizing a critical mass of diversity on boards and committees.** Tokenism is defined as “the experience of being the only or one of the only members of a group in the workplace.”<sup>137</sup> The UCLI data suggests that attorneys with underrepresented identities, especially in senior positions at the typical law firm, may frequently be “tokens.”

The experience of being a token can negatively impact individuals.<sup>138</sup> These negative impacts are collectively known as “token pressures”<sup>139</sup> and are far-ranging. Racial token status can lead to lower job

in the finalist pool”).

124 Eric Luis Uhlmann & Geoffrey L. Cohen, *Constructed Criteria: Redefining Merit to Justify Discrimination*, 16 PSYCH. SCI. 474 478–79 (2005); Michael I. Norton, Joseph A. Vandello & John M. Darley, *Casualty and Social Category Bias*, 87 J. PERSONALITY & SOC. PSYCH. 817, 817 (2004).

125 Michael I. Norton et al., *Casualty and Social Category Bias*, at 829.

126 Cavicchia, *Is There Bias in Your Hiring Process?*.

127 *Id.*

128 Neil Irwin, *How Some Men Fake an 80-Hour Workweek and Why It Matters*, N.Y. TIMES (May 4, 2015) (citing Erin Reid, *Embracing, Passing, Revealing, and the Ideal Worker Image: How People Navigate Expected and Experienced Professional Identities*, 26(4) ORG. SCI. 997 (2015)) (“Some 31 percent of the men and 11 percent of the women whose records Ms. Reid examined managed to achieve the benefits of a more moderate work schedule without explicitly asking for it.”).

129 *Id.* (“Those specifically requesting a lighter workload, who were disproportionately women, suffered in their performance reviews; those who took a lighter workload more discreetly didn’t suffer.”).

130 See *supra* Key Finding #6.

131 Jamie J. Ladge, Beth K. Humbert, Marla Baskerville Watkins & Brad Harrington, *Updating the Organization Man: An Examination of Involved Fathering in the Workplace*, 29 ACAD. MGMT. PERSPS. 152, 167 (2015).

132 Jerome Doraisamy, *How Flexible Working Improved One Firm’s Retention and Staff Motivation*, LAWS. WKLY. (Sept. 24, 2018), <https://www.lawyersweekly.com.au/sme-law/24109-how-flexible-working-improved-one-firm-s-retention-and-staff-motivation>.

133 ABA, *VISIBLE INVISIBILITY*, at 13.

134 *Id.*

135 *Id.* at 12.

136 Utah Center for Legal Inclusion, *Mentoring Program*, <https://www.utahcli.org/mentoring/> (last visited Apr. 11, 2021).

137 *Barriers to Advancement*, 2020 WLU Survey, at 31 n.18 (citing ROSABETH MOSS KANTER, *MEN AND WOMEN OF THE CORPORATION* (1977); ADIA HARVEY WINGFIELD, *NO MORE INVISIBLE MAN: RACE AND GENDER IN MEN’S WORK* (2013)); Christopher F. Karpowitz, Tali Mendelberg & Lee Shaker, *Gender Inequality in Deliberative Participation*, 106(3) AM. POL. SCI. REV. 533, 535 (Aug. 2012)).

138 KANTER, *MEN AND WOMEN OF THE CORPORATION*, at 206–44 (defining tokenism and finding that tokenism negatively shapes people’s experiences within groups).

139 *Barriers to Advancement*, 2020 WLU Survey, at 14.

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satisfaction<sup>140</sup> and greater BIPOC turnover.<sup>141</sup> Token women lawyers experience more frequent sexual harassment and discrimination than non-token women,<sup>142</sup> have lower performance ratings than men,<sup>143</sup> and have less informational and emotional support than women in more balanced firms.<sup>144</sup>

Underrepresentation and tokenism can be a barrier to advancement. For example, women are less likely to be appointed to board positions if there is already one woman on the board.<sup>145</sup> “Twokenism” is a related finding that many corporate boards are much more likely to “include exactly two women . . . than would be expected by chance” and that “decision makers are . . . less likely to add a woman to a board once it includes two women.”<sup>146</sup> A recent study of diverse lawyers found that “almost a third of women lawyers and almost a third of lawyers of color felt that there is only one ‘slot’ for someone like them and that they have to compete with their women

and/or minority colleagues.”<sup>147</sup> When there are only one or two spots for diverse individuals in positions of power, it creates a barrier not based on merit.

Critical mass theory is the idea that marginalized groups are less likely to participate fully when they are a small minority in the room.<sup>148</sup> When women make up a minority of individuals in a group setting, they participate less than their male colleagues.<sup>149</sup> This means that groups may be missing out on the insights of diverse group members simply because the makeup of the group is not representative. Women may not be fully empowered to contribute equally until they are more fully represented in positions of power.<sup>150</sup> Research on corporate board gender diversity suggests “that at least three female directors are needed before boards experience tangible benefits from gender diversity.”<sup>151</sup>

140 Yoland Flores Niemann & John F. Dovidio, *Relationship of Solo Status, Academic Rank, and Perceived Distinctiveness to Job Satisfaction of Racial/Ethnic Minorities*, 83 J. APPLIED PSYCH. 55, 69 (1998).

141 Christopher D. Zatzick, Marta M. Elvira & Lisa E. Cohen, *When Is More Better? The Effects of Racial Composition on Voluntary Turnover*, 14 ORG. SCI. 483, 492 (2003).

142 Janet Rosenberg, Harry Perlstadt & William R. F. Phillips, *Now That We Are Here: Discrimination, Disparagement, and Harassment at Work and the Experience of Women Lawyers*, 7 GENDER & SOC. 415, 429 (1993); Louise F. Fitzgerald, Fritz Drasgow, Charles L. Hulin, Michele J. Gelfand & Vicki J. Magley, *The Antecedents and Consequences of Sexual Harassment in Organizations: A Test of an Integrated Model*, 82 J. APPLIED PSYCH. 578, 586 (1997) (“[A] male-dominated workplace was significantly implicated in high levels of sexual harassment.”).

143 Paul R. Sackett, Cathy L. Z. DuBois & Ann Wiggins Noe, *Tokenism in Performance Evaluation: The Effects of Work Group Representation on Male-Female and White-Black Differences in Performance Ratings*, 76 J. APPLIED PSYCH. 263, 266–67 (1991).

144 Jean E. Wallace & Fiona M. Kay, *Tokenism, Organizational Segregation, and Coworker Relations in Law Firms*, 59 SOC. PROBS. 389, 403 (2012).

145 Nina Smith & Pierpaolo Parrotta, *Why So Few Women on Boards of Directors? Empirical Evidence from Danish Companies in 1998–2010*, 147(2) J. BUS. ETHICS 445, 460 (2018).

146 Edward H. Chang, Katherine L. Milkman, Dolly Chugh & Modupe Akinola, *Diversity Thresholds: How Social Norms, Visibility, and Scrutiny Relate to Group Composition*, 62 ACAD. MGMT. J. 144, 144 (2019).

147 Commission on Women in the Profession & MCCA, *You Can’t Change What You Can’t See*, at 40.

148 Miriam Schwartz-Ziv, *Gender and Board Activeness: The Role of a Critical Mass*, 52 CAMBRIDGE UNIV. PRESS 751, 751 (Mar. 23, 2017) (“Boards with at least 3 directors of each gender are found to be at least 79% more active at board meetings than those without such representation.”).

149 Karpowitz et al., *Gender Inequality in Deliberative Participation*, at 544. *But see* Lissa Lamkin Broome, John M. Conley & Kimberly D. Krawiec, *Does Critical Mass Matter? View from the Boardroom*, 34 SEATTLE U. L. REV. 1049, 1049 (2011) (finding only “limited support” for critical mass theory).

150 Brittany Karford Rogers, *When Women Don’t Speak: Groundbreaking BYU Research Shows What It Takes for a Woman to Truly Be Heard*, BYU MAG. (Spring 2020), <https://magazine.byu.edu/article/when-women-dont-speak/>.

151 Chang et al., *Diversity Thresholds: How Social Norms, Visibility and Scrutiny Relate to Group Composition*, at 159–60 (citing Alison M. Konrad, Vicki Kramer & Sumru Erkut, *Critical Mass: The Impact of Three or More Women on Corporate Boards*, 37 ORG. DYNAMICS 145 (2008); Mariateresa Torchia, Andrea Calabrò & Morten Huse, *Women Directors on Corporate Boards: From Tokenism to Critical Mass*, 120 J. BUS. ETHICS 299 (2011)).

In addition, “[w]hen women do not represent a critical mass, they experience token pressures that heighten their visibility, reinforce negative stereotypes and induce performance pressures.”<sup>152</sup> Thus, it is important to reevaluate governance committees and other groups to ensure that there is adequate representation.

Addressing tokenism requires actively assessing the makeup of boards and other leadership groups to determine if token status is keeping those bodies from achieving the benefits that come with having a critical mass of diverse representation. One way to do this is to consider “at least 30 percent women, lawyers of color, LGBTQ+ lawyers, and lawyers with disabilities for leadership and governance roles, equity partner promotions, formal client pitch opportunities, and senior lateral positions.”<sup>153</sup>



**Allocate assignments equitably.** Legal employers typically make promotion decisions based on past performance. At first glance this may seem to be a system based on merit alone. However, past performance is heavily dependent on the assignments an employee is given. This can result in a “thin file” problem. Research has shown that women<sup>154</sup> and BIPOC<sup>155</sup> in professional careers are often given inferior work assignments and receive less performance support (both formally and informally) compared to their white, male peers.<sup>156</sup> Such inequity in the quality of work assignments and feedback can lead to women and BIPOC having “thin files.”<sup>157</sup> The quality of work assignments and feedback has been shown to affect advancement opportunities and may play a role in retention by reducing job satisfaction and increasing disengagement for women and BIPOC. This may contribute to the drop-off of diversity in senior positions found in the UCLI survey.

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One study showed Black associates were given lower-quality assignments than white associates.<sup>158</sup> Another found that women were assigned “predictable and

152 Women Lawyers of Utah, *Barriers to Advancement*, at 14.

153 This is referred to as the “Mansfield Rule.” Diversity Lab, *Mansfield Rule 4.0*, <https://www.diversitylab.com/mansfield-rule-4-0/> (last visited Apr. 19, 2021).

154 Janice Fanning Madden, *Performance-Support Bias and the Gender Pay Gap Among Stockbrokers*, 26(3) GENDER & SOC’Y 488, 488 (June 2012).

155 Janice Fanning Madden & Alexander Vekker, *Output-Based Performance Pay, Performance-Support Bias, and the Racial Pay Gap within a Large Retail Stock Brokerage*, 56(4) INDUS. RELS. 662, 685 (Oct. 2017).

156 Madden & Vekker, *Output-Based Performance Pay, Performance-Support Bias, and the Racial Pay Gap within a Large Retail Stock Brokerage*, at 685; Madden, *Performance-Support Bias and the Gender Pay Gap Among Stockbrokers*, at 488.

157 Iris Bohnet, *Tackling ‘the Thin File’ That Can Prevent a Promotion*, N.Y. TIMES (Oct. 3, 2017), <https://www.nytimes.com/2017/10/03/business/women-minority-promotion.html>.


158 Kevin Woodson, *Race and Rapport: Homophily and Racial Disadvantage in Large Law Firms*, 83 FORDHAM L. REV. 2557, 2568 n.74 (2015) (citing Richard H. Sander, *The Racial Paradox of the Corporate*



routine work” while men were given “developmental work.”<sup>159</sup> Such disparities in assignment quality may be even worse for women of color. A recent ABA study found that because “women of color were less likely to get good work” (including stretch assignments), “by the time they were third and fourth year associates, they had less experience than the white men who had joined the firm at the same time they did.”<sup>160</sup> This lack of quality assignments lowered the advancement prospects of women of color “and affected their entire career trajectories.”<sup>161</sup> The study also found that “44% of women of color . . . reported being denied desirable assignments” compared to only 2% of white men.<sup>162</sup>

This discrepancy in work assignment quality and the resulting “thin files” of BIPOC and women highlights that simply making advancement decisions

“colorblind” will not, in isolation, ensure employers meet DEI goals. Addressing these inequities directly can lead to more equitable decisions based on the commitment and talent of individual attorneys, rather than on systemic, if unconscious, bias.

 **Ask for help.** UCLI offers many other potential approaches to explore. For instance, examining onboarding processes to ensure that new employees have the tools to succeed can decrease unequal access to support early on. Incentivizing participation in affinity groups can also create a supportive environment for all attorneys to thrive. UCLI also offers sample policies employers can use to build a strategy that addresses their unique challenges.

# CONCLUSION

The findings of the UCLI survey will not be surprising to most readers. The general trends outlined in this report are largely consistent with other research findings about the state of diversity in the U.S. legal profession. We believe the best practices highlighted in this report will be helpful as legal employers work to create systemic change. These recommendations emphasize the value of leadership and data-driven, holistic approaches to diversity, equity, and inclusion. This effort to collect data is an important first step to this work, and Utah can be a leader in similar efforts going forward. We can genuinely reflect and engage with these issues to push diversity, equity, and inclusion forward in our profession.

This is just the beginning.

*Law Firm*, 84 N.C. L. REV. 1755, 1805–07 (2006)) (“Compared to white attorneys . . . , a lower percentage of black attorneys reported handling an entire matter on their own, being involved in formulating strategy on half or more of their matters, or being responsible for keeping their clients updated on matters.”).

159 Helle Holt & Suzan Lewis, *‘You Can Stand on Your Head and Still End Up with Lower Pay’: Gliding Segregation and Gendered Work Practices in Danish ‘Family-friendly’ Workplaces*, 18(S1) GENDER, WORK, AND ORG. e202, e202 (2011).

160 Commission on Women in the Profession & MCCA, *You Can’t Change What You Can’t See*, at 46 (citing ABA, VISIBLE INVISIBILITY).

161 *Id.*

162 *Id.* at 46.