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Prioritizing Diversity and Inclusion in the Construction Community: Shaping the Future of our Industry

I. Introduction

Despite growing diversity in the overall US workforce, the construction industry continues to be overwhelmingly dominated by white men. Although progress has been made, there is clearly a need for greater industry inclusion. The way companies foster, and nurture diversity is an important aspect of organizational culture. Diversity initiatives, whether targeting racial, economic, gender, or cultural diversity, are needed to ensure the construction industry continues to evolve. The way companies foster, and nurture diversity is an important aspect of organizational culture.

Recent Headlines

April 2018: “Three California-based associates hit Morrison & Foerster LLP with a \$100 million proposed class action that alleges the firm delays pay and advancement opportunities for female attorneys who take maternity leave or avail themselves of benefits the firm offers to working mothers. Three...associates said in their pregnancy bias class action...that the firm has an “old boys club” culture.”¹

January 2018: “The lawsuit alleges the four workers—Lerone Boyd, Michael Marshall, Jimmy Allen, and Trojuan Cornett—were subjected to daily verbal abuse and harassment that included constant use of the “N” word, and actually culminated in two assaults on one of the workers.” (Texas)²

December 2017: “Laquila Group, Inc., a New York City-based construction firm whose past projects include the Barclay’s Center in Brooklyn, will pay \$625,000 and take other measures to settle a race discrimination and retaliation lawsuit filed by the U.S. Equal Employment Opportunity Commission (“EEOC”) on behalf of six black workers. According to their lawsuit, these black workers were subjected to racial discrimination from their foreman for several years, in the form of racial slurs and offensive nicknames. Even though the firm’s managers witnessed this ongoing behavior and some workers complained, no action was taken to stop the harassment.

¹ <https://www.law360.com/articles/1038559/mofo-slapped-with-100m-pregnancy-bias-suit>

² https://www.bizjournals.com/dallas/prnewswire/press_releases/Texas/2018/01/25/DA97873

One worker who complained was laid off soon after and not rehired for other projects.” (New York)³

June 2017: “The owners of a Pleasanton construction company, a husband and wife, are under fire for allegedly giving an African-American employee a Confederate flag purse as a holiday gift.... The holiday gift from her boss was a rhinestone purse with a Confederate flag on it. And inside, photos of her boss and his wife dressed in Donald Trump attire with more Confederate memorabilia behind them.” (California)⁴

II. Diversity Defined

According to a recent demographic analysis conducted by the Pew Research Center, by 2055, the U.S. will no longer have a single racial or ethnic majority. This shift towards a more diverse population will have major impacts on the workforce and how organizations address diversity in the workplace. Organizations that understand how to manage diversity in the workplace effectively will hold a distinct advantage when it comes to recruiting and hiring talent.

Our Industry is Not Diverse

Diversity within a workplace encompasses race, gender, ethnic groups, age, religion, sexual orientation, citizenship status, military service and mental and physical conditions, as well as other distinct differences between people.

History

In 1976, The National Women’s Law Center filed a lawsuit against the U.S. Department of Labor for its failure to fulfill its duties under Executive Order 11246 that “prohibits federal contractors and federally assisted construction contractors and subcontractors who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin.”⁵ The lawsuit resulted in regulations issued by the Office of Federal Contract Compliance Programs (OFCCP) of the U.S. Department of Labor that were designed to integrate women in construction, including the goal-setting of increasing participation of women to 6.9% of the work hours on federal contractors’ sites.⁶

III. Why Diversity is Needed

The construction trades have long been one of the industries with the lowest percentage of women in the workforce. As of 2015, 2.6% of workers in the construction and extraction trades

³ <http://www.nydailynews.com/new-york/brooklyn-contractor-ponies-625g-racial-discrimination-suit-article-1.3677400>

⁴ <http://abc7news.com/news/employee-sues-pleasanton-company-after-allegedly-receiving-racist-gift/2073886/>

⁵ See *Women Working in Construction v. Marshall*, No. 76-527 (D.D.C. filed April 13, 1976) (on file at NWLC); Exec. Order No. 11246, 30 Fed. Reg. 12319 (Sept. 24, 1965)

⁶ 41 C.F.R. 60-4.

were women.⁷ This number is the same as it was three decades ago. Women working in construction numbered 1.3 percent of the entire U.S. workforce.⁸

As of December 2016, approximately 939,000 women were employed in various occupation sectors of the construction industry. The following is a breakdown of women by occupation sector in the construction industry⁹:

Occupation Sector	Number of Women	Percentage
Sales & Office	423,000	45%
Professional & Management	293,000	31%
Natural Resources, Construction & Maintenance	196,000	21%
Service Occupations	14,000	1.5%
Production, Transportation & Material Moving	13,000	1.4%

Numbers of Women in the Construction Industry Sector

2005.....	1,079,000
2006.....	1,131,000
2007.....	1,119,000
2008.....	1,069,000
2009.....	970,200
2010.....	807,000
2011.....	828,000
2012.....	802,000
2013.....	840,000
2013.....	872,000
2015.....	929,000
2016.....	939,000

2016 General Construction Statistics

Total Workers in Construction	10,328,000
Men in Construction	9,389,000
Women in Construction	939,000

In the construction industry, women earn on average 95.7% of what men do.¹⁰ In addition, black women earn \$0.81 for every \$1.00 paid to white, non-Hispanic men working as construction laborers. For Hispanic women in construction-related occupations, this pay gap is even greater, where they make 71.7% of Hispanic men’s and only 50.4% of white men’s earnings in the field.

⁷ National Women’s Law Center (NWLC) calculations using Miriam King et al. Integrated Public Use Microdata Series, Current Population Survey 2013, https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2015/08/final_nwlc_womeninconstruction_report.pdf (accessed 3 Jun 2018)

⁸ Table 13, “Women in the labor force: a databook”, U.S. Bureau of Labor Statistics, Report No. 1065, Apr 2017, <https://www.bls.gov/opub/reports/womens-databook/2016/pdf/home.pdf> (accessed 3 June 2018).

⁹ “Statistics of Women in Construction”, The National Association of Women in Construction (NAWIC), <https://www.nawic.org/nawic/statistics.asp> (accessed 3 Jun 2018).

¹⁰ “Statistics of Women in Construction”, The National Association of Women in Construction (NAWIC), <https://www.nawic.org/nawic/statistics.asp> (accessed 3 Jun 2018); *see also* Table 19, “Women in the labor force: a databook”, U.S. Bureau of Labor Statistics, Report No. 1065, Apr 2017, <https://www.bls.gov/opub/reports/womens-databook/2016/pdf/home.pdf> (accessed 3 June 2018).

As for women in leadership in the construction industry, only 13% of construction firms are women-owned. Moreover, 9% of women-owned construction firms achieve revenues of \$500,000.00 or more.¹¹

Data on the percentage of lesbian, gay, bisexual, transgender and queer (LGBTQ) workers in the trades is not available.

The design field is not much better off. According to a 2012 survey of American Institute of Architect (AIA) member firms, only 16% of the AIA's membership is female. Forty-nine percent of architecture students and 39% of interns are women, but just 17% are firm principals and partners. And these numbers have not changed significantly in the last 30 years. We have a huge shortage of skilled labor in the trades right now.

According to the Associated Builders and Contractors, 1.6 million new skilled workers will be needed between now and 2022. In 2002, 11 percent of construction workers were 55 and older, which increased to 20.7 percent by 2015.¹² In 2005, 10.7 percent of workers were between 20 and 24, but that number declined to 7.3 percent in 2015. These trends suggest that about 20 percent of all construction workers will retire over the next 10 years, and, a total of 12 percent will be leaving the industry within the next five years.¹³

Retention

Even if women are ultimately hired for construction jobs, they are often subject to gender stereotypes that make it harder for them to retain their jobs, such as employer assumptions about actual or perceived caregiving responsibilities or women's physical capabilities in the field. Moreover, women face extreme sexual harassment and denigration. The U.S. Department of Labor reported that 88 percent of women construction workers experience sexual harassment at work.¹⁴

Rewards for Embracing Diversity and Inclusion

According to a cumulative Gallup Workplace Studies, companies with inclusive cultures do better on several indicators than those that are not inclusive: customer satisfaction +39%, productivity +22%, profitability +27%, and turnover down by 22%.

How We Can Promote Diversity

We need to focus on inclusion, not just bias reduction and elimination. On a practical level, that means putting in extra effort to attract, recruit, train and retain employees in order to increase gender diversity.

Race Discrimination

¹¹ http://www.womenable.com/content/userles/2016_State_of_Women-Owned_Businesses_Executive_Report.pdf (leadership section)

¹² Labor Force Statistics from the Current Population, <https://www.bls.gov/cps/cpsaat11b.htm> (accessed 3 Jun 2018).

¹³ "Millennials: The Construction Industry Needs You." <https://jobsite.procore.com/millennials-the-construction-industry-needs-you> (accessed 3 Jun 2018)

¹⁴ U.S. Department of Labor Advisory Committee on Occupational Safety and Health, Women in the Construction Workplace: Providing Equitable Safety and Health Protection (June 1999), <https://www.osha.gov/doc/accsh/haswicformal.html>.

The United States has a lengthy history of racial discrimination in various aspects of life including education, employment, housing, public accommodations and other areas; the Supreme Court has dealt with the issue in numerous cases. Below is a list of U.S. Supreme Court cases involving race discrimination and the rights of members of racial groups, including links to the full text of the U.S. Supreme Court decisions.¹⁵

- Korematsu v. U.S. (1944) The Court in this case upheld the conviction of an American of Japanese descent, who had been prosecuted for remaining in California after a 1942 presidential order designating much of the west coast a "military area", and requiring relocation of most Japanese-Americans from California (among other west coast states)
- Shelley v. Kraemer (1948) This decision held that "racially restrictive covenants" in property deeds are unenforceable. In this case, the "covenants" were terms or obligations in property deeds that limited property rights to Caucasians, excluding members of other races.
- Brown v. Board of Education (1954) In this landmark case, the Court prohibited racial segregation of public schools.
- Brown v. Board of Education II (1955) This decision quickened the process for implementing the anti-segregation orders issued in "Brown I."
- Bailey v. Patterson (1962) The Court in this case prohibited racial segregation of interstate and intrastate transportation facilities.
- Loving v. Virginia (1967) This decision holds that state laws prohibiting inter-racial marriage are unconstitutional.
- Jones v. Mayer Co. (1968) The Court held in this case that federal law bars all racial discrimination (private or public), in sale or rental of property.
- Lau v. Nichols (1973) The Court found that a city school system's failure to provide English language instruction to students of Chinese ancestry amounted to unlawful discrimination.
- University of California Regents v. Bakke (1978) The Court decides that a public university may take race into account as a factor in admissions decisions.
- Batson v. Kentucky (1986) This decision holds that a state denies an African American defendant equal protection when it puts him on trial before a jury from which members of his race have been purposefully excluded.
- Grutter v. Bollinger (2003) In this case, the Court finds that a law school's limited "affirmative action" use of race in admissions is constitutional.
- Schuette v. Coalition to Defend Affirmative Action (2014) This decision holds that a state constitutional amendment that bans affirmative action does not violate the Equal Protection clause.

Implicit Bias Defined

Equality and equity are not synonymous. Equality is treating everyone the same. Equity is giving everyone what they need to be successful. The 2015 decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* weighed challenges to the Fair Housing Act of 1968, which forbids "disparate impact" discrimination -- actions or practices that appear neutral on the surface but are racist in practice (i.e., real estate agents more easily sharing pricing information with white buyers instead of black ones). This decision is the first time

¹⁵ <https://civilrights.findlaw.com/discrimination/race-discrimination-u-s-supreme-court-cases.html>

that the Supreme Court addresses implicit bias. According to Justice Kennedy, focusing on the disparate impacts of a policy, rather than disparate treatment, acknowledges the role of “the unconscious prejudices and disguised animus that escape easy classification as disparate treatment.”

Breaking Through Barriers: Actionable Advice and Tips to Promote Inclusion

- Create a more inclusive work culture where women and men are equally valued
- Set up a diversity council or committee with equal gender, cultural, and position representation
- Work to remove unconscious bias in recruitment
- Have women involved in recruitment
- Use gender-neutral language in job postings and job descriptions.
- Respect everyone’s self-identification — call everyone by their preferred name and pronoun.
- Ensure that adequate gender-neutral restroom facilities are available on every job site.
- Ensure that all crew members have properly fitting personal protective equipment. (It can often be unsafe for smaller people to use “standard” PPE.)
- Develop and enforce a zero-tolerance sexual harassment policy — not only for your employees but for all subs on a job site.
- Connect with tradeswoman organizations and post your jobs on their websites.
- Be willing to challenge your assumptions about an applicant’s ability to perform the work — give people a chance to prove themselves.
- Make it a priority to hire and work with other subcontractors or vendors that are women- or trans-owned and/or who make it a priority to hire women, trans, and gender non-conforming people.
- Measure and report diversity job satisfaction, turnover, and long-term diversity representation
- Set up professional development programs
- Develop and enforce a zero-tolerance sexual harassment policy. Below is a downloadable sample sexual harassment policy along with a sample complaint procedure.
- Ensure that all crew members have properly fitting personal protective equipment (PPE).
- Create opportunities for mentorship.

Other Sources

<http://www.keepcraftalive.org/breaking-down-gender-bias-in-the-construction-industry/>

<https://medium.com/@marissaseverino/putting-an-end-to-gender-bias-in-the-construction-industry-9fb37c79e4f6>

<https://www.protradecraft.com/breaking-down-gender-bias-toolkit-construction-business-owners>