

# PUBLICATION

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## Diversity Matters: Note from the Editor

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**As we prepared to ring in a new year and decade, I felt hopeful. I looked forward to 2020 and witnessing nature's amazing demonstration of rebirth, renewal, and growth notwithstanding the harshness winter might have brought. Soon enough 2020 was here. A new decade had begun. And Spring was on the horizon.**

Then COVID-19 happened. COVID-19 has impacted every aspect of life from how we work, when we work, whether we work, how we worship, how we shop (and when), where we eat, whether our children attend school, whether we can visit family and friends, how we grieve, and even how close we stand to one another. COVID-19 has given us time and in some instances forced us to pause. To say that things have not changed is to ignore reality. After all, avoiding close contact with others, i.e., social distancing, is the current reality.

But COVID-19 is not the only virus that has caused social distance and unrest in America. Racism has and continues to cause distance—not only socially but also economically and educationally—between people of color (especially blacks) and whites in America. The recent unnecessary and devastating deaths of George Floyd, Ahmaud Arbery, and Breonna Taylor highlight the systemic injustices blacks in America know all too well. Still, seeing another person who looks like me treated as less than and having his or her life taken or threatened simply for being black in America is not only heartbreaking, it is unacceptable. While we actively practice social distancing to mitigate the spread of COVID-19, we must also actively stand against, speak against, and otherwise resist the social distancing that continues to fuel systemic discrimination against blacks in America.

The adverse impact COVID-19 has had on all Americans is undeniable. Indeed, the nation swiftly implemented social distancing and enacted legislation to address the health, social, educational and economic issues caused by the virus. As a labor and employment attorney, I have a keen interest in COVID-19's impact on employees and the workplace. Since March, I have been reading, synthesizing, and analyzing new laws like the Families First Coronavirus Response Act, state and federal executive orders, the CARES Act, safer-at-home or similar orders, new regulations, and ever-expanding Q&As and other guidance that were quickly implemented to address the impact of COVID-19 in the workplace and on the economy. I recently co-presented a webinar on creating return-to-work protocols to address the risks associated with reopening and continuing operations in the wake of COVID-19, and I continue to advise clients through these new issues. This "new normal" includes requiring at least six feet of space between employees while in the workplace, staggering breaks and lunches to foster distance, installing physical barriers between work spaces, closing the previously trendy "open office space," conducting meetings, performance reviews and other communications using video technology, and implementing other measures to mitigate potential exposure to and spread of COVID-19 by limiting social interaction between employees. While some issues employers are currently facing and/or will face due to the virus are novel, ensuring that employment decisions do not disparately impact diverse employees is not new.

For decades, federal and state laws have made it unlawful for an employer to make employment decisions based on any protected trait, which specifically includes race. As a result, employers issue policies expressly prohibiting discrimination on the basis of race and encouraging a culture of inclusion and respect. But, COVID-

COVID-19 creates the need for social distancing, which could fuel implicit biases and make the goal of creating inclusive work environments even more challenging. Notably, the legal profession is not immune to these issues as our profession has struggled to retain black attorneys and create inclusive work environments. The need for social distancing to mitigate the spread of COVID-19 coupled with the ever-present social distancing blacks and other diverse attorneys encounter could upend the work that has been done to diversify the profession.

As an African American woman, the reality of discrimination, racism, and inequitable treatment because of my skin is an issue I face daily whether through my own personal experience, a family member or friend's experience, or knowledge of deaths, threats or other injustices faced by other blacks. We all, including employers, must not ignore these injustices because these tragedies impact us all. As Dr. Martin Luther King Jr. so aptly stated, "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality. Tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."

Failing to maintain open communication with diverse attorneys, particularly amidst a global pandemic and heightened protests and awareness of the racism, police brutality, and inequitable treatment blacks face in America, may leave black and other diverse (and nondiverse) attorneys feeling isolated and uncertain. Leaders at all levels should proactively address diversity and inclusion – emphasizing "inclusion" – when crafting work protocols and plans in response to the COVID-19 pandemic. Leaders should also speak out against racism and stand in solidarity with their black employees, clients, customers, and all Americans who are zealously advocating for equality and justice for blacks in America. This is an opportunity to be creative and reenergize your organizations' focus on developing inclusive work environments that truly embrace differences and provide pathways to success for all employees.

In this issue of *Diversity Matters*, we highlight the opportunity for growth and renewal of diversity and inclusion efforts notwithstanding COVID-19. This includes tips from in-house counsel on how to navigate the impact of COVID-19 on the way we work, learning from the recession that adversely impacted many diverse lawyers, continuing summer programs, getting creative with sponsorship opportunities, and making time to set and achieve goals. COVID-19 has caused us all to pause. This "pause" can be used to focus on how we can emerge from COVID-19 stronger, including creating work environments that allow all employees to succeed regardless of their differences. Despite current challenges, I remain optimistic about this year and new decade. The Supreme Court's ruling, just this week, that "an employer who fires an individual merely for being gay or transgender defies the law" adds to my hope for a better tomorrow. I look forward to witnessing how not only the world, but also the legal profession, seize the opportunity to effect change through their response to the current pandemic and unrest among and between Americans who are advocating for justice for black Americans.