

PUBLICATION

Interrupting Bias in the Legal Workplace – Part 2

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This article is Part 2 of a two-article series. Part 1 discussed four main patterns of racial and gender bias in the legal profession, as identified in a report developed by the American Bar Association's Commission on Women in the Profession, the Minority Corporate Counsel Association, and the University of California, Hastings College of Law.² Part 2 identifies and demonstrates two cutting-edge toolkits employers can implement to interrupt racial and gender biases in their own workplaces. More specifically, we will explore easily implementable, measurable tweaks to existing workplace systems that can interrupt racial and gender bias in law firms and in-house legal departments.

The report outlines a three-step approach to successfully interrupt bias in hiring, assignments, performance evaluations, compensation, and sponsorship. For demonstration purposes, we will discuss the approaches used to interrupt bias in law-firm hiring and in performance evaluations for in-house legal departments.

Both approaches include three basic steps: (1) using metrics, (2) implementing bias interrupters, and (3) repeating steps one and two as needed. Organizations routinely use metrics to assess progress toward any strategic goal. Metrics can help an organization pinpoint where bias exists and assess the effectiveness of ongoing measures. For each metric, employers should examine whether patterned differences exist between majority men, majority women, men of color, and women of color, including any other underrepresented group that the organization tracks, such as military veterans or members of the LGBTQ community. All bias interrupters should apply to both written materials and meetings, where relevant. Because every organization is different, not all interrupters will be relevant; that said, consider the following interrupters more of a menu.

Interrupting Bias in Law-Firm Hiring

To demonstrate potential biases in hiring and the challenges to interrupting these biases, the report noted the following case study: when comparing identical resumes, "Jamal" needed eight more years of experience to be considered as qualified as "Greg;" mothers were 79 percent less likely to be hired than otherwise identical candidates without children; and "Jennifer" was offered \$4,000 less in starting salary than "John."

To interrupt these biases, the Law Firm Toolkit directs organizations to first use (in part) the following metrics:

track the candidate pool through the hiring process from initial contact, to resume review, to interviewers, to hiring;

analyze where underrepresented groups are falling out of the hiring process;

track whether hiring qualifications are waived more often for some groups;

track interviewers' reviews and/or recommendations to ensure they are not consistently rating majority candidates higher than others; and

track metrics by individual supervising attorney, department and/or office, and the firm as a whole.

In addition, organizations should implement bias interrupters to empower those involved in the hiring process to spot and interrupt bias. This can be achieved by appointing bias interrupters (HR professionals or team members) and training them on how to spot bias. More information about this training is available at BiasInterrupters.org. The appointed bias interrupters should be involved at every step of the hiring process. After appointing and empowering bias interrupters, organizations should assemble a diverse pool of candidates by:

- limiting referral hiring;
- tapping diverse networks;
- considering candidates from multitier schools;
- getting the word out to diverse candidates;
- changing the wording of job postings (using masculine-coded words like "leader" and "competitive" tends to reduce the number of women who apply); and
- insisting on a diverse pool if search firms are used in the hiring process.

Once a diverse pool is assembled, organizations should implement bias interrupters in the resume review process. BiasInterrupters.org offers a resource – "Identifying Bias in Hiring Worksheet" – that identifies common forms of bias that can affect the hiring process. Organizations should focus on qualifications that are important when making hiring decisions and require accountability. When qualifications are waived for a specific candidate, a record should be maintained that explains why those qualifications are no longer important and identifies the candidates who received the waiver. Resumes must be graded on the same scale, for example, the report suggests employer remove extracurricular activities from resumes, as they can artificially disadvantage class migrants and increase class-based bias. Resume reviewers should avoid inferring family obligations (i.e., train people not to make inferences about whether someone is committed to the job due to parental status and not to count gaps in a resume as an automatic negative). Employers should also use "blind auditions." For example, if women are dropping out of the pool at the resume review stage, consider removing demographic information from resumes.

Employers are further instructed to interrupt bias in the interview process through structured interviews wherein interviewers ask the same questions to all candidates, and only ask those questions that are directly relevant to the position. Employers should ask performance-based questions, which are a strong predictor of a candidate's potential for success. Organizations should also consider behavioral interviewing by asking questions that reveal how candidates have dealt with prior work experiences. Employers are encouraged to engage in work-sample screening by requiring candidates to submit examples of their prior work. Developing a consistent rating scale will help decrease bias in the interview process. Lastly, if "culture fit" is a criterion for hiring, employers should provide a specific work-relevant definition.

Once steps one (using metrics) and two (implementing bias interrupters) are accomplished, employers should repeat these steps as needed. For example, organizations should return to their key metrics and assess whether there are any noticeable changes. If employers do not observe a change, they should implement stronger bias interrupters, or consider if they are targeting the wrong stage in the process. This third step should be applied in an iterative manner until metrics improve.

As previously noted, the report not only provides a three-step approach to interrupting bias in law-firm hiring; it also provides a detailed approach as to assignments, performance evaluations, compensation, and sponsorship. For a comprehensive, step-by-step outline on these topics, please refer to the [Commission and MCCA's full report](#).

Interrupting Bias in Performance Evaluations for In-House Legal Departments

Next, we will explore the In-House Toolkit and discuss how to interrupt bias in performance evaluations in legal departments. To provide context for this discussion, the report cites the following case study:

Law firm partners were asked to evaluate a memo by a third-year associate. Half the partners were told the associate was black; the other half were told the identical memo was written by a white associate. The partners found 41% more errors in the memo they believed was written by a black associate as compared with a white associate. Overall rankings also differed by race. Partners graded the white author as having "potential" and being "generally good," whereas they graded the black author as "average at best."

Bias in the evaluation process spans across industries and is not limited to law firms. The report notes an informal study in the technology industry that revealed 66 percent of women's performance reviews included negative personality criticism. Conversely, such criticism was contained in only one percent of men's reviews.

To tackle bias in performance evaluations, in-house legal departments should first use the following metrics:

track whether performance evaluations show consistent disparities by demographic group;

analyze whether employees' ratings fall after they have children, after they take parental leave, or after they adopt flexible work arrangements;

track whether the same performance ratings result in different promotion or compensation rates for different groups; and

keep metrics by individual supervisor, department, and country, if relevant.

For each metric, organizations should examine if patterned differences exist between majority men, majority women, men of color, women of color, and any other underrepresented group the company tracks, such as veterans, individuals with disabilities, and people who identify as LGBTQ.

Organizations should next implement bias interrupters to empower those involved in the evaluation process to spot and interrupt bias. Organizations should appoint HR professionals or department team members as bias interrupters and provide them with special training to spot bias, involving them at every step of the evaluation process.³ Once companies designate and empower bias interrupters, organizations should tweak their performance evaluation forms as needed. The report suggests a variety of tweaks, including the following:

- Evaluation forms should begin with clear and specific performance criteria directly related to job requirements (e.g., instead of "He writes well," try "He writes clear memos to clients that accurately portray the legal situations at hand.")
- Companies should instruct reviewers to justify their ratings and provide supporting evidence, ultimately holding reviewers accountable. Bare ratings lacking specifics facilitate bias and do not provide constructive advice to the employees.
- Ensure any evidence used to support a rating pertains to the current evaluation period (e.g., mistakes made two years ago are not acceptable evidence of a poor rating today).
- Separate discussions about potential and performance. Reviewers tend to judge majority men on potential, whereas others are typically judged on performance.
- Separate personality issues from skill sets. Reviewers tend to accept a narrower range of behavior from women and people of color than from majority men.

Once bias interrupters are appointed and empowered and an organization's performance evaluation form is tweaked, the In-House Toolkit recommends that companies tweak the performance evaluation process itself.

Suggested tweaks include helping employees effectively advocate for themselves ("Writing an Effective Self-Evaluation" is available at BiasInterrupters.org); setting up more formal systems for sharing successes within your in-house department (rather than including self-promotion in the evaluation process), such as monthly emails highlighting employees' accomplishments; providing a bounceback⁴ to ensure individual supervisors' reviews do not show bias toward or against a particular group (consider asking HR to perform the necessary analysis); ensuring appointed bias interrupters play an active role to spot and correct instances of bias (such as in rankings calibration meetings with management); and maintaining formal performance appraisal systems, rather than using informal, on-the-fly systems that have a tendency to reproduce patterns of bias.

Once organizations perform steps one (using metrics) and two (implementing bias interrupters), the third step involves repeating steps one and two as needed using an iterative process until metrics improve.

A key takeaway from the report is the need for both law firms and in-house legal departments to implement a deliberate, calculated, and disciplined approach to overcoming racial and gender bias in the workplace. Traditional approaches simply are not achieving quantifiable results, and this new generation of bias-interrupters provides a promising avenue towards success. Firms and in-house departments are encouraged to remain committed to knocking down barriers that perpetuate workplace biases, and we are proud to explore the Commission and MCCA's Research Report so that the legal profession continues marching towards workplace equality.

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² <https://www.mcca.com/wp-content/uploads/2018/09/You-Cant-Change-What-You-Cant-See-Executive-Summary.pdf>

³ As previously noted, employers can find more information about training their appointed bias interrupters at BiasInterrupters.org.

⁴ A "bounceback" is when someone talks through a supervisor's reviews with him or her because the supervisor's performance evaluations show persistent bias.