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Neurodiversity—Another Front in the Battle for Diversity, Equity, and Inclusion in the Legal Industry

To be effective, the legal industry's DEI efforts should include consideration of neurodiversity—differences in brain operations—which can bring benefits to organizations and support compliance with the Americans with Disabilities Act.

By Xochitl S. Strohbehn

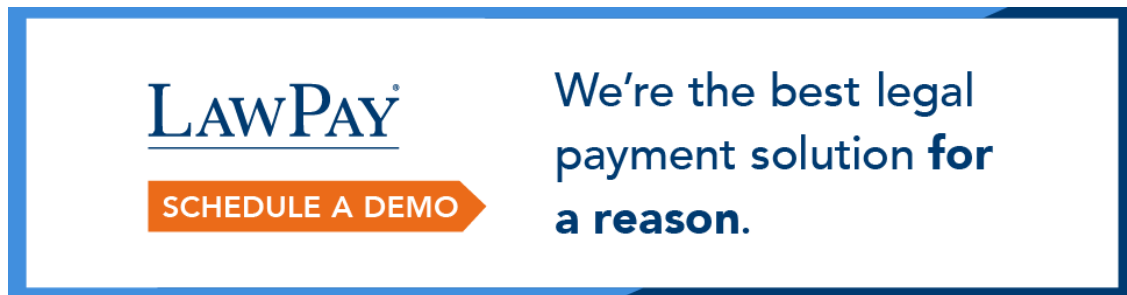
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Diversity, equity, and inclusion—commonly referred to as “[DEI](#)”—“involves creating a place where everyone is welcome, supported, and has the resources they need to grow and thrive regardless of identity, origin, or difference in circumstances.” Although DEI’s [origins](#) extend back to the 1960s, the focus on DEI has significantly increased in numerous industries, including the legal profession, following the 2020 murder of George Floyd. Thus far, discussions and strategies related to enhancing DEI in the legal profession have mostly focused on improving recruitment, retention, and opportunities for lawyers of different backgrounds, origin, and identity. However, there is another relatively common diverse group, the neurodiverse, that has been largely, but not entirely, neglected in recent DEI efforts.

Embracing neurodiversity—which broadly refers to differences in how people’s brains operate—can offer firms numerous benefits, including capitalizing on the creativity and innovation of their neurodiverse employees. This is in addition to the fact that many neurodiverse traits and “conditions,” such as [attention deficit hyperactivity disorder](#) (ADHD) or [autism](#), fall within the scope

of the Americans with Disabilities Act as “mental impairments” for which employees and students are entitled to accommodations. Given the relative ubiquity of neurodiversity, it is critical that, as part of pursuing DEI milestones, the legal profession identify and implement strategies that allow it to improve the hiring, inclusion, and retention of neurodiverse lawyers.

A blue-bordered banner for LawPay. On the left is the LawPay logo in blue serif font, with a blue underline under 'LAW'. Below the logo is an orange arrow pointing right with the text 'SCHEDULE A DEMO' in white. To the right of the logo and arrow, the text 'We're the best legal payment solution for a reason.' is written in a blue sans-serif font, with 'a reason.' in bold.

Neurodiversity—What Is It and How Many Lawyers Are Neurodiverse?

Neurodiversity is [defined](#) as “variation in the human brain regarding sociability, learning, attention, mood and other mental functions; the range of diverse functions as a continuum and the natural variation that is simply part of the human experience.” Nicole Baumer, M.D. & Julie Frueh, M.D., “[What is neurodiversity?](#),” *Harv. Health Pub. Blog*, Nov. 21, 2021 (describing neurodiversity as “the idea that people experience and interact with the world around them in many different ways; there is no one ‘right’ way of thinking, learning, and behaving, and differences are not viewed as deficits”).

Neurodiversity is often used to refer to the autism spectrum or other “neurological and developmental conditions,” such as ADHD or learning disabilities.

Some estimates indicate that [one in five people](#) are neurodiverse while others indicate that [up to one-third](#) of the general population is neurodiverse. And most pertinent to the legal industry, [12.5 percent of lawyers](#) responding to a 2016 survey reported having ADHD—well above other estimates of the general population indicating that potentially [4–8 percent of adults have ADHD](#). More recent data indicate a slight increase in the number of law school graduates and lawyers who are [self-reporting disabilities](#) (a term that is defined as inclusive of neurodiverse traits), with 5.5 percent of law school graduates and

1.2 percent of all lawyers reporting a disability in 2021 as compared with 4.1 percent of law school graduates and 0.6 percent of all lawyers reporting a disability in 2019. While the overall numbers reported to the National Association for Law Placement are relatively low, these numbers do not diminish the need to focus on ways to improve hiring and retention of neurodiverse lawyers and staff. The need to emphasize neurodiversity is even greater given that available statistics may be depressed by the stigma attached to disability, which may inhibit lawyers' and law school graduates' willingness to report a "disability."

Law Firms and Legal Organizations Should Endeavor to Capitalize on the Benefits of Incorporating Neurodiversity into DEI Strategies and Plans

As part of the recent DEI-related efforts, law firms and organizations have been developing and implementing strategies and plans to improve DEI across the legal profession. In contrast, there has generally been little focus on incorporating neurodiversity into DEI plans and strategies. Robert Brown, ["Why Neurodiversity Remains DEI's Least-Tracked Metric,"](#) *Bloomberg Law*, Nov. 4, 2021 (subscription required). There is good reason for the legal profession to begin doing so.

Enhancing DEI strategies and plans to address hiring, retaining, and promoting neurodiverse legal staff and lawyers can yield significant benefits to law firms and other employers in the legal profession. Indeed, numerous commentators have recognized that neurodiverse employees often contribute [creative and innovative solutions](#) to problems. Real-world experience with implementing neurodiversity programs has demonstrated that neurodiverse employees can maintain "hyperfocus" on complex tasks over a sustained period of time, may have a greater attention to detail than more neurotypical employees, and perform better at identifying patterns in data. [All of these traits provide value](#) to legal teams seeking to solve problems—often complex and knotty ones—for clients. Given the value that neurodiverse lawyers and legal staff can offer to

organizations and their clients, organizations should be keen to incorporate neurodiversity into their DEI strategies by offering accommodations for their neurodiverse employees.

Recommendations for Enhancing the Hiring, Inclusion, and Retention of Neurodiverse Lawyers and Legal Service Employees

Experts in the area of neurodiversity suggest numerous ways to accommodate neurodiverse employees, and many, if not all, of the recommendations are focused on understanding and evaluating employees' needs and working to meet those needs. For example, when interviewing candidates on the autism spectrum, law firms should understand and make interviewers aware of communication styles that may be unique to such candidates, rather than expecting them to adjust to neurotypical communication styles. [Interviewers should be made aware](#) that, for example, individuals on the autism spectrum might not be able to maintain eye contact, while candidates with ADHD may fidget.

Interviewers who are aware of these unique communication styles may be better able to focus on the candidate's skills and talents, rather than be distracted by qualities that may have little to do with the candidate's ability to perform the role well. Firm- and organization-specific campaigns to raise awareness of unique social and communication styles at the recruitment and interview stages may make it easier for legal organizations to identify and hire talented lawyers and legal staff who might otherwise be missed.

Along with recommending ways for employers to improve their recruitment and hiring of neurodiverse talent, neurodiversity experts and activists have made numerous [recommendations for accommodations](#) that may improve retention and inclusion of neurodiverse employees, such as the following: (i) allowing employees to work with headphones to assist with concentration; (ii) creating quiet spaces and tailoring work areas to meet employees' needs; (iii) providing "piecemeal instructions and deadlines" to provide additional

structure; (iv) explaining the purpose, expectations, and processes for tasks; (v) changing or offering flexibility in working hours; and (vi) opening channels of communication to permit neurodiverse employees to share their challenges and ask for what they need. In addition, law firms and legal organizations may want to host training or workshops to increase awareness of neurodiversity and the ways colleagues can [support their neurodiverse coworkers](#).

Ultimately, each neurodiverse employee has unique needs, and for that reason, employers should avoid using a cookie-cutter approach to accommodations. Instead, employers and employees should collaborate to craft the accommodations that will aid employees in maximizing their effectiveness. Simply put, the needs of each neurodiverse employee should be the North Star for any accommodation that is implemented.

[Xochitl S. Strohbehn](#) is a partner at Venable LLP in New York City, New York.

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