



## **2021 CLM Construction Conference**

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San Diego, California

### **Poking the Bear: Championing Diversity, Equity, and Inclusion in Construction**

#### **I. Change is Needed Now**

##### **Poking the Bear**

Social media has changed the way people talk to one another. Important conversations are now had through shared stories loaded up with hashtags. Many trending hashtags have brought meaningful awareness to issues that were too often ignored or silenced. Consider how #blacklivesmatter and #metoo moved the dial in terms of visibility, awareness, and rectification to our friends, peers, and colleagues that had experienced discrimination and harassment. Hashtag culture has taken off; it is trendy and easy, but hashtags are hollow, and frankly, talk is cheap. By simply slapping a hashtag in front of a compelling word, phrase, or trending topic we feel we are bringing awareness to those that are scrolling their feeds. Are we? Superficially, yes. But engaging change is difficult. Why? It is uncomfortable. But change is always uncomfortable and important changes take time and effort. A topic that is “trending” and is ready for a deep dive? Diversity, Equity & Inclusion (DE&I).

However, to achieve meaningful change, especially as it relates to DE&I, thought leaders must champion for change and continue to engage in difficult discussions. These discussions are necessary across all facets of life and work, while interlacing these discussions with our own individual principles. Such principles are born from our own personal ethics and in turn our ethical decision-making. “Ethics?” some might question as an appropriate starting point. However, ethics is the best place to start engaging in this discussion as it allows individuals to consider the impact of their choices and/or decisions. Ethics is simply determining right from wrong, or what is good or bad.

Rather than waiting for the next trending #hashtag, the time is now to be proactive instead of reactive. And one area that is too often stereotyped needs our attention now: construction.

##### **Defining and Understanding Diversity, Equity & Inclusion (DE&I)**

With DE&I initiatives “trending” at the moment; simply saying words like “diversity,” “equity,” and “inclusion” have essentially become buzzwords and slapped with a #hashtag to get more views, clicks, and likes. Websites generate the best hashtag combinations to garner more likes and followers; this is universally accepted with tagsets.com, as an example, stating “*Just copy any of these ninety hashtags, add them to the publication text or as the first comment*”

*below your post to get more likes and followers!”* Businesses, industries, and individuals alike are dropping the words left and right, without truly learning what “DE&I” means. Moreover, in the age of social media, hashtags can be confusing with underlying and/or hidden meanings. Thus, defining diversity, equity, and inclusion is a must (source: <https://dei.extension.org>):

- **Diversity** is the presence of differences that may include race, gender, religion, sexual orientation, ethnicity, nationality, socioeconomic status, language, (dis)ability, age, religious commitment, or political perspective. Populations that have been-and remain- underrepresented among practitioners in the field and marginalized in the broader society.
- **Equity** is promoting justice, impartiality and fairness within the procedures, processes, and distribution of resources by institutions or systems. Tackling equity issues requires an understanding of the root causes of outcome disparities within our society.
- **Inclusion** is an outcome to ensure those that are diverse actually feel and/or are welcomed. Inclusion outcomes are met when you, your institution, and your program are truly inviting to all. To the degree to which diverse individuals are able to participate fully in the decision-making processes and development opportunities within an organization or group.

#### **DE&I and the Law**

The Fourteenth Amendment to the United States Constitution was adopted on July 9, 1868 and granted citizenship to all persons born or naturalized in the United States; including those formerly enslaved. Moreover, the amendment guaranteed “equal protection of the laws” and was one of three amendments passed abolishing slavery and establishing civil and legal rights to black Americans following the American Civil War. This amendment had an impact in its own time, being intensely contested by former Confederate states. Additionally, the first section of the amendment is one of the most litigated pieces of the Constitution having formed the basis for landmark Supreme Court decisions regarding racial segregation (*Brown v. Board of Education of Topeka, 1954*), regarding abortion (*Roe v. Wade, 1973*), regarding the 2000 presidential election (*Bush v. Gore, 2000*), regarding gun rights (*McDonald v. Chicago, 2010s*), and regarding same-sex marriage (*Obergefell v. Hodges, 2015*).

The Constitution has been used greatly through the years in litigation that both directly and indirectly involved DE&I matters; however, the law can only take society so far. A brief history lesson reveals this. In 1963 the Equal Pay Act was signed into law, which afforded men and women protections from sex-based wage discrimination. In 1964 the Civil Rights Act became law with further prohibited employment discrimination from private employers, labor unions and employment agencies; additionally, the Equal Employment Opportunity Commission (EEOC) was created (in 1965) as a government entity created to eliminate discrimination in the workplace based on a person’s race, gender, color, religion, national origin, age, disability, or gender. Additional historic laws were passed in 1967 and 1978 regarding age-related discrimination and pregnancy, respectively, while in 1990 the Americans with Disabilities Act (ADA) was signed into law protecting those with disabilities.

Take a step back and realize DE&I discussions are not new. The conversation has changed through the years but many of the underlying issues that brought us laws enacted between the 1960s and now remain relevant.

## II. DE&I + Construction

### Breaking Down Stereotypes (by the Statistics)

The construction industry is ridden by stereotypes that surround those that work in the field; from being male dominated, heavily white, and is poorly compensated. The first stereotype rings true; with nearly 11 million people working within the construction industry, the industry is a “boys club.” According to the U.S. Bureau of Labor Statistics (BLS) only 10.9%, or approximately 1.2 million of those individuals are women. When the ratio of men to women is roughly 9 to 1, gender diversity is clearly missing. Moreover, beyond gender, the breakdown of race exemplifies the divide further; approximately 88.6% of individuals identified their race to include “white,” with a combined 38% of individuals indicating they identified as “white,” “black or African American,” “Asian,” or “Hispanic and/or Latino.” Similarly, with this breakdown, the industry appears to be trailing in racial diversity; however, the racial divide is not as wide as the gender gap (source: <https://www.bls.gov/cps/cpsaat18.htm>). The last stereotype, regarding compensation, tells a different story. According to the May 2020 BLS wage estimates, the annual mean wage for all occupations was \$56,310, whereas for construction, the annual mean wage was \$53,940. Thus, slightly below average. Three of the top stereotypes are generally true.

### Breaking Down Stereotypes (by Perceptions)

Beyond measurable statistics, one perceived stereotype within the construction industry is regarding treatment of those that are different, whether related to their gender and/or sex. The story has been told and retold, it has been animated into cartoons, and is largely satire at this point in time; the idea of males working on a construction site hooting, hollering, and whistling at a female passerby. This stereotype as a whole is included with an article (Three Myths of Construction Workers: “Why we are not Second-Class Citizens” by Forrest Sim) prepared by a construction worker that defends his profession. The article begins by presenting the case that construction workers in general are no different than anyone else; immediately after, the author is on the defensive. The following is an excerpt:

*“Now, before you start typing that impassioned reply about how many times you have had inappropriate and unsolicited whistles, gestures, or invitations from guys on a construction site, please allow me to clarify my argument. Especially in light of the current #MeToo social media movement, I have no desire to dismiss the valid and numerous accounts of women who have felt victimized by such verbal advances. It is my intent, however, to point out that while this type of harassment is unfortunately common at construction sites, I do not believe that we are witnessing the nature of Construction Workers, per se. Rather, these are exemplifying the nature of [many] men and of herd mentality. I firmly believe that if we gathered a group of ten men in an open-air setting, who were all friends, and all lawyers, or all entrepreneurs, or all ranchers, or all engineers that they would probably act the same as a similar group of Construction Workers. This myth is busted. The truth is that some Construction Workers are gross and shout catcalls. But some of all men are gross and shout cat-calls.”*

The above excerpt reveals the commonplace of harassment while in the same breath acknowledges #metoo; however, seemingly justifies what is commonplace through an argument

of “men will be men” or “boys will be boys.” This discussion shall continue in the DE&I + Ethics + Construction section, specifically regarding ethical principles and ethical decision-making.

### **III. DE&I + Ethics**

#### **DE&I Initiatives**

DE&I warrants everyone’s attention; the initiatives are real. The need to have the discussion is real. It is now typical to find internal Human Resources departments spearheading diversity and inclusion initiatives. Collectively, such groups are raising awareness to a commonly misunderstood discussion, while attempting to address issues with foresight rather than hindsight. More so in terms of proactive rather than reactive. Case in point is recent litigation (*Monsour v. Polsinelli PC, S.D. Tex, No. 4:21-cv-01046*) where a terminated employee was suing their former employer allegedly due to wrongful termination due to sexual orientation among other DE&I concerns. The former employee alleged that the firm’s diversity and inclusion initiatives were simply “*an empty attempt to shed its reputation as a Midwestern, “good old boys” law firm.*” The suit further alleged differential treatment when compared to other equity partners, differing compensation, and bias from within (source: <https://news.bloomberglaw.com/business-and-practice/gay-lawyer-calls-polsinellis-diversity-focus-marketing-ploy>).

Absent of providing any legal review and/or response to this litigation (to which is inappropriate for this document and panel discussion), the lawsuit represents an emerging issue; the use of DE&I initiatives to make or rebut allegations; specifically, as it relates to the terminated employee and firm – were the firm’s DE&I initiatives hollow or legitimate. Moreover, the debate on both sides of this would prove difficult as well. Inherently, the universal arguments would undoubtedly hinge upon individual, corporate, and industry ethical principles.

#### **Ethical Principles and DE&I**

Inherently the social, legal, and emerging issues concerning DE&I interlace within the 12 fundamental ethical principles outlined by the Josephson Institute: honesty, integrity, promise-keeping, loyalty, fairness, caring, respect for others, law-abiding, commitment to excellence, leadership, reputation and morale, and accountability. Randomly evaluating any of these 12 reveals the how, why, etc.:

- Law-abiding – Numerous laws are in place to protect individuals from discrimination based on age, sex, gender, and disability.
- Caring – Empathy is the ability to understand and share the feelings of another. This is at the heart of the discussion especially for those in the majority within the construction industry.
- Respect for others – Initiatives being presented and developed by companies are intended to create equal opportunities for all individuals; moreover, such initiatives promote respect amongst its workforces.

#### **Ethical Decision Making and DE&I**

In addition to these principles, ethical decision making is critical. There are 9 steps to which individuals (and companies) can take to be more ethical:

- Gather the facts.

- Define the ethical issues.
- Identify the affected parties.
- Identify the consequences.
- Identify the obligations.
- Consider your character and integrity.
- Think creatively about potential actions.
- Check your gut.
- Decide on the proper ethical action and be prepared to deal with opposing arguments.

### **Ethics, DE&I, and the Insurance Industry**

Tangential to the construction industry is the insurance industry; the industries intersect with claims and litigations. In 2016, insurance industry CEOs signed a “commitment statement” embracing DE&I initiatives at the “Diversity & Inclusion Institute Leadership Conference.” They pledged: *“The world and our industry have never faced more change and opportunity than we do today. Diverse and inclusive teams have been proven to be more effective, and able to create better economic and social outcomes. We are committed to driving diversity at all levels of our organizations by creating inclusive and engaging cultures that effectively serve our customers, shareholders, communities, and people. By making meaningful progress on diversity in insurance, we can win the critical war for talent, which will allow our companies and our industry to succeed. We agree to come together in one year to check on our progress and make any updates necessary to this commitment. From individual company programs to industry-wide initiatives, insurance businesses are committed to promoting and advancing diversity in their business culture—in every sector and at all levels.”*

## **IV. DE&I + Ethics + Construction**

### **Efforts in Construction to Enact Change**

In 2020, major players in the construction industry recognized the importance of diversity and inclusion. The Associated General Contractors of America (AGC) launched “Culture of CARE,” a program intended to enhance industry diversity and inclusiveness. The AGC indicated that companies that sign the pledge have promised to “commit, attract, retain and empower” their employees. Additionally, Brynn Huneke, AGC director of diversity and inclusion and member engagement stated: *“We are asking companies to commit to hire based on skill and experience, regardless of ethnicity, gender, race, nationality, religion or sexual orientation. “The aim is to attract prospective employees by creating workplaces and cultures that are free from harassment, hazing and bullying; to retain high-performing employees by identifying and removing barriers to advancement; and then empower every employee to promote a culture of diversity and inclusion—or a culture of care—within their companies.”* Companies can take the pledge to C-A-R-E.

- C - Commit...to hire and pay based on skill and experience regardless of ability, age, ethnicity, gender identity, nationality, race, religion, sex, or sexual orientation.
- A - Attract...prospective employees by creating inclusive workplaces that are free from harassment, hazing and bullying.
- R - Retain...high-performing employees by identifying and removing barriers to advancement.
- E - Empower...every employee to promote a culture of diversity and inclusion.

Individuals can also take the pledge, which states, *“I believe that every individual has the right to work in an environment that is free from harassment, hazing and bullying. I will do my part to build a culture that is diverse, safe, welcoming, and inclusive by taking action to ensure that unwelcome, offensive, discriminatory or harassing language and/or behavior is not tolerated in my workplace.”* Pledging is easy. You simply check the box, enter your information, and you are committed. Immediately after making the commitment highlights the underlying theme – “communicate your commitment” – with easy ways to share your commitment on social media: “Let current and prospective clients, partners, and employees know you’ve committed to a Culture of CARE.” Next is ways to “show” your commitment through stickers for your hardhat or posters to hang on the site. If you simply stopped then, you would never find “Culture of CARE’s Guide for Making Better Decisions,” a model “HR Policy,” or “20 HR Best Practices for Diversity in Construction.” This is where the meat and potatoes of the discussion truly is. AGC’s initiative should be applauded. Their initiative, though, does highlight the subtext of this ethics discussion; pledging is easy, sharing the pledge is easy, showing your pledge is easy, but enacting change is anything but easy – it requires time, work, and commitment.

### **What WE can do in Construction to Enact Change**

In order to evoke meaningful change, we must first move beyond #hashtag culture and what is easy and start championing issues that truly matter. Consider what champions do for their protégés as an analogy:

- Champions invest their time and effort in their protégés.
- Champions publicly advocate for their protégés and work to make change.
- Champions challenge their protégés, expose their blind spots, and provide constructive criticism.
- Champions are backbones and provide the support needed for success.
- Champions open the door for opportunity and success.

In considering what champions offer their protégés, simply replace protégé with DE&I initiatives. We cannot succeed with hollow initiatives, but rather we can succeed if we champion change. We must get uncomfortable, be accountable, and poke the bear.