



PROGRAM MATERIALS

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Helping Diverse Attorneys Thrive: Tips from In-House Counsel and Outside Counsel

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Dr. Sharon Meit Abrahams is a legal talent development expert with over 25 years of experience in success coaching for attorneys and executing high impact programs for law firms. She has created and implemented firm wide initiatives that help attorneys maximize their productivity while maintaining engagement. When individuals produce, a firm increases its profitability. As a talent development leader, she has handled every aspect of an attorney's firm life from onboarding and integration, through mentoring and training to succession planning and exit interviews.

Dr. Abrahams has published three books with the American Bar Association and regularly publishes articles for Thomson Reuters and American Legal Media. Known for engaging and educational programs, Dr. Abrahams is a sought-after keynote speaker, program facilitator and law firm advisor.

Connect with Dr. Abrahams for creative and informative CLE programming.

SPEAKERS



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Wesley Bizzell is the Senior Assistant General Counsel and Managing Director of Political Law & Ethics Programs at Altria. He is the current President of the National LGBT Bar Association.

Wesley Bizzell serves as Senior Assistant General Counsel and Managing Director of Political Law and Ethics Programs, External Affairs for Altria Client Services Inc. ("ALCS"). Wesley provides in-house legal counsel on matters relating to the political, legislative, and lobbying activities of Altria Group, Inc., its services companies, including ALCS, and its operating companies, including Philip Morris USA Inc., U.S. Smokeless Tobacco Co. LLC, John Middleton Co., and Ste. Michelle Wine Estates Ltd.

In this role, Wesley is responsible for ensuring that Altria and its companies comply with all laws and regulations regarding federal, state, local, and international campaign finance, government ethics, gifts to government officials, lobbying disclosure and reporting, and charitable giving. Overseeing a comprehensive compliance system covering the regulation of government affairs, Wesley provides advice and guidance on political law compliance for more than 75 jurisdictions. Wesley also heads the legal team that supports Altria's public policy activities, providing services related to legislative and regulatory drafting and interpretation. Wesley is a member of Altria's Compliance Leadership Team and its Anti-Corruption Compliance Working Group.



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Malachi is the firm's inaugural Chief Diversity Partner at Williams & Connolly LLP.

Malachi chairs the firm's Diversity & Inclusion Committee and devotes all of his time as a partner to leading the firm's efforts to further increase diversity and inclusion through recruiting, retention, and professional advancement. Malachi has spent almost his entire career actively recruiting and mentoring diverse attorneys. In his current role, he provides strategic leadership and vision to furthering the firm's core values of diversity and inclusion. He focuses much of his effort on firm initiatives such as

outreach to diverse student groups at law schools, the firm's diverse associate sponsorship program, junior partner client development initiatives, support of non-profit organizations that promote the advancement of diverse attorneys, the firm's diversity speaker series, and firm hosted panel discussions focused on the advancement of women and diverse attorneys.

In addition to providing high level leadership to advance the firm's diversity and inclusion, Malachi also works directly with diverse attorneys to ensure their individual development, advancement, and career satisfaction. At the same time, Malachi works with individual partners, associates, and firm management to help promote an inclusive environment for all. Malachi also works closely with clients and case managers to ensure that client diversity and inclusion goals are supported.



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Bonnie Lau is a partner at Morrison Foerster and the Chair of Leadership Council on Legal Diversity (LCLD).

Bonnie's practice focuses on antitrust and unfair competition class action litigation in federal and state courts, as well as enforcement proceedings before agencies in the U.S. and other countries. She leverages her almost 15 years of experience in civil and criminal antitrust litigation and investigations to advise clients across a range of industries that face government scrutiny, including technology and manufacturing.

A dynamic litigator, Bonnie has significant experience defending class action and complex commercial disputes, and deftly handles international competition investigations and enforcement issues. She has defended companies in antitrust and related complex litigation involving claims of price-fixing, output suppression, monopolization, and group boycott, as well as prosecuted antitrust counterclaims in patent and IP infringement matters. Bonnie has also successfully defended class actions, multi-district litigations and enforcement actions in federal and state trial and appeals courts across the U.S., and advised on parallel international class actions and foreign regulatory actions. intellectual property claims.

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Practical Ideas for Reducing Bias in the Workplace

Sponsorship v. Mentorship

- Mentors provide advice from a distance.
- Sponsors not only guide their associates, but they also steer them toward work opportunities, provide professional development directly through their own cases, and spend their own political capital to advocate on their behalf.
- Key to successful sponsorship is starting with a strong match -- pairing associates and partners who have an existing, organic relationship.
- Accountability is another key. Solicit regular feedback from associates and interview sponsors in order to monitor effectiveness.

Importance of Informal Feedback

- Partner feedback is critical to any associate's success.
- Diverse attorneys report receiving less informal feedback.
- Performance feedback application can, at regular intervals, offer associates the opportunity to meet with and get informal feedback from any partners they select.
- The application allows the firm to monitor who is seeking feedback from whom and whether it was completed.
- It is important to emphasize that the program will *not* track the substance of the informal feedback.

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LGBTQ Diversity & Inclusion in the Legal Profession: The Basics and Beyond

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In the past decade, much has changed for those who identify as lesbian, gay, bisexual, trans, or queer (LGBTQ). LGBTQ characters are frequently featured in movies, broadcast and cable television shows, and advertisements.¹ Same-sex marriage is now legal in every jurisdiction in the United States, given the U.S. Supreme Court's 2015 ruling in *Obergefell v. Hodges*.² In the U.S., 21 states protect LGBTQ employees from being fired simply because of their sexual orientation or gender identity.³ In many instances, major corporations and large law firms helped lead the way in convincing Americans that LGBTQ individuals should be treated equally. However, while much progress has been made, much work remains to ensure that our society and our workplaces are welcoming to all diverse individuals, including those who are LGBTQ. Many companies, law firms, and their leaders want to support their LGBTQ employees, but may not fully understand the workplace challenges faced by this community or how to address them.⁴

Unfortunately, no single policy, program, or practice will solve the lack of LGBTQ representation in corporations and law firms or make these organizations more inclusive and welcoming. In short, diversity and inclusion are not a destination that we finally reach one day. A company is never going to be able to complete the "task", check the box, and move on. Instead, achieving diversity, inclusion, and equity is a journey that has multiple milestones.

As a starting point, corporations and law firms need to adopt basic policies, programs, and practices to attract and retain LGBTQ employees. However, they must go beyond those basics to forge a better, more inclusive, and more authentic workplace culture that truly embraces all diverse employees, including those who identify as LGBTQ. These efforts must be integrated into the organization's business and day-to-day activities. In order to succeed, such efforts cannot simply be bolted-on; they cannot be an afterthought. Instead, they must become rooted in the organization's culture, linked with the organization's

¹ A total of 10.2% of regular characters in the 2019-2020 broadcast television season were LGBTQ. GLAAD, *Where We Are on TV* (November 7, 2019), available at <https://www.glaad.org/sites/default/files/GLAAD%20WHERE%20WE%20ARE%20ON%20TV%202019%202020.pdf>.

² *Obergefell v. Hodges* (2015), available at https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf.

³ In October 2019, the U.S. Supreme Court heard oral arguments in three cases that will determine whether Title VII provides anti-discrimination protections to LGBTQ employees: *Bostock v. Clayton County*; *Altitude Express v. Zarda*; and *Harris Funeral Homes v. EEOC*. Further, legislation is advancing in the Commonwealth of Virginia to add anti-discrimination protections for LGBTQ individuals in employment, housing, public accommodations, and credit. RVA Magazine, *LGBTQ Groups Celebrate Passage of 'Historic' Virginia Values Act* (February 10, 2020), available at <https://rvamag.com/gay-rva/lgbtq-groups-celebrate-passage-of-historic-virginia-values-act.html>.

⁴ Unfortunately, this lack of understanding also occurs with respect to employees who are members of racial or ethnic minority groups.

overall business strategy, and treated as a business-critical priority. However, this is not a task solely for management; it is the responsibility of each employee to determine how they can advance diversity and inclusion in their organizations in both big and small ways on a daily basis.

Where We Are

Over the last fifty years, countless articles have been written providing the business case for diversity, including LGBTQ diversity.⁵ In fact, a Google search for “business case for diversity” yields over 429 million hits, many of which offer compelling and persuasive data on the benefits of a diverse and inclusive workplace. Thus, I will not focus on the multitude of reasons that diversity, and in this case LGBTQ diversity, is vital for an organization’s success. That said, it is important to note our starting points—that LGBTQ individuals (along with other diverse individuals) are woefully underrepresented in the senior management of corporations and in the partnership ranks of law firms, and LGBTQ animus and discrimination in the workplace continues to exist.

The U.S. Commission on Civil Rights estimates that between 5.4 million and 8.2 million employees self-identify as LGBTQ, with the vast majority (85.33%) working in the private sector.⁶ However, in corporate America, the number of LGBTQ CEOs and general counsels in the Fortune 500 can be counted on a single hand, and less than one half of one percent (0.03%) of directors of Fortune 500 companies are openly LGBTQ in 2017.⁷ For law firms, only 2.07% of law firm partners identified as LGBTQ in 2019.⁸

Unfortunately, but unsurprisingly, many LGBTQ individuals also continue to face discrimination in the workplace, at rates much higher than the normal population. According to a report published by Out & Equal in 2017⁹:

- One in four LGBTQ employees has reported they experienced employment discrimination in the last five years;
- 27% of transgender people who held or applied for a job in the last year reported being fired, not hired, or denied a promotion due to their gender identity; and
- Nearly one in ten LGBTQ employees has left a job because the environment was unwelcoming.

Clearly, LGBTQ individuals continue to face challenges both in our society at large and in the workplace.¹⁰ The intersectionality of race, gender, and ethnicity makes these statistics

⁵ M.V. Lee Badgett, et. al, The Williams Institute, *The Business Impact of LGBT-Supportive Workplace Policies* (2013).

⁶ U.S. Commission on Civil Rights, *Working for Inclusion: Time for Congress to Enact Federal Legislation to Address Workplace Discrimination Against Lesbian, Gay, Bisexual, and Transgender Workers* (2017)

⁷ OUT Leadership, *Do LGBT+ Directors Count in Fortune 500 Companies* (October 2017), available at <https://outleadership.com/insights/do-lgbt-directors-count-in-fortune-500-companies>.

⁸ National Association for Law Placement, *2019 Report on Diversity in U.S. Law Firms* (December 2019), available at https://www.nalp.org/uploads/2019_DiversityReport.pdf.

⁹ Out & Equal, *2017 Workplace Equality Fact Sheet: Lesbian, Gay, Bisexual, and Transgender (LGBT) Workplace Discrimination at a Glance* (2017), available at <http://outandequal.org/2017-workplace-equality-fact-sheet/>

¹⁰ Unfortunately, the experience of young Americans does not offer much positive news either. According to a recent survey of young Americans aged 15 to 24, 83% of those who identified as LGBTQ report having witnessed someone being mistreated because of their gender identity or sexual orientation or to have personally experienced such mistreatment. In addition, nearly one-third (32%) who identified as LGBTQ reported that they personally had been mistreated or targeted because of their sexual orientation or gender identity, with a majority (56%) saying they feared for their safety, and roughly as many (54%) believing the acts were direct and purposeful. Such discrimination is often also intersectional, in addition to other discrimination based on the individual’s race, gender, religion, or nationality. Public Religion Research Institute, *Diversity, Division, Discrimination: The State of Young America, an MTV/PRRI Report* (2018), available at <https://www.prri.org/research/mtv-culture-and-religion>.

even more troubling. LGBTQ employees of color face significantly higher rates of discrimination than their white counterparts.¹¹ Thus, it is not surprising that the Out Now Global LGBT2020 Study, which surveyed more than 100,000 LGBTQ individuals, found that 24% of lesbians, 30% of gay men, 40% of bisexuals, and 55% of transgender employees in the U.S. believed that coming out could negatively impact future promotions.¹² A ground-breaking study of the legal profession, currently being conducted by the American Bar Association in partnership with Syracuse University's Burton Blatt Institute, is shedding additional light on the challenges facing LGBTQ lawyers in both law firms and corporate law departments.¹³

Further, all of us who are LGBTQ know that coming out is not a one-time occurrence. LGBTQ individuals come out throughout their lives. Coming out happens every time we change jobs, meet new colleagues, secure new clients, or move to a new office location. For us, it occurs when we place photos of our spouses or significant others on our desk and when we discuss our weekend plans in casual conversations with colleagues. The willingness of LGBTQ employees to be authentic in such situations hinges on how they believe their boss, their colleagues, and their clients will react. Sadly, too many LGBTQ employees read the situation and conclude it is necessary to hide their sexual orientation and gender identity in the workplace. A 2016 report from Credit Suisse reports that 41% of LGBTQ workers in the U.S. and 72% of senior LGBTQ executives say they have not come out openly at work.¹⁴ Such covering is harmful to both the employee and the organization, detrimentally affecting individual employee morale, engagement, and retention.¹⁵

As a result, it remains important for all law firms and corporations to routinely examine their practices, policies, and procedures to ensure that they are not only welcoming of LGBTQ employees, but that those employees can grow, thrive, and advance in their careers within that organization.

Advancing to the Basics

Even today, many companies and law firms are just beginning the journey for diversity, inclusion, and equality as it relates to their LGBTQ employees. Although it may appear to be an overwhelming task, there are a number of immediate steps a company or law firm can take to intentionally and proactively foster an inclusive and welcoming culture. Though these steps may be simple, they can quickly engender extremely positive outcomes.

Inclusive Workplace Policies. The starting point for any corporation or law firm should be examining its existing non-discrimination and anti-harassment policies to confirm the policies specifically cover LGBTQ employees. While some states and localities have enacted workplace protections for LGBTQ employees, the vast majority of jurisdictions

¹¹ M.V. Lee Badgett, et. al, The Williams Institute, *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination* (2007), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-sears-lau-hobias-in-the-workplace-jun2007.pdf>.

¹² Out Now Global, *LGBT2020 Study LGBT Diversity: Show Me the Business Case* (2015), available at <http://www.outnowconsulting.com/media/13505/Report-SMTBC-Feb15-V17sm.pdf>.

¹³ To participate in this study, visit https://syracuseuniversity.qualtrics.com/jfe/form/SV_dds9YLorbjiOlsp?id=cqjx. See also, American Bar Association Press Release, *ABA launches nationwide study to expand opportunities for disabled, LGBT+ lawyers* (May 2017), available at https://www.americanbar.org/news/abanews/aba-news-archives/2017/05/aba_launches_nationw.html.

¹⁴ Credit Suisse Environmental, Social and Governance (ESG) Research, *LGBT: The Value of Diversity* (April 2016), available at https://research-doc.credit-suisse.com/docView?document_id=x695480&serialid=u0qj22TwXJAWyF%2FreBXW%2FeSFdVYyWRIZQGZPIIAumTo%3D.

¹⁵ For more information about such covering, see Kenji Yoshino, *Covering: The Hidden Assault on Our Civil Rights*, (Random House 2006).

have no such laws in place. Thus, it is crucially important that an organization's policies clearly and specifically prohibit discrimination and harassment based on a person's real or perceived sexual orientation, gender identity, or gender expression. Thankfully, most large organizations already have such inclusive workplace policies. According to the 2020 Human Rights Campaign's Corporate Equality Index, 93% of the Fortune 500 have a non-discrimination policy that includes sexual orientation, and 91% have a policy that includes gender identity.¹⁶

Commitment from Leadership. As a compliance attorney, I frequently cite "tone at the top" to describe the importance of senior management in promoting ethical behavior and creating a culture of compliance. Likewise, a law firm's or corporation's leadership must be passionate and outspoken advocates for diversity, inclusion, and equality. We have found that when the Managing Partner or General Counsel is consistently visible and vocal on these issues, it is one of the engines that propels diversity and inclusion forward within the organization. However, leaders must clearly walk the talk, or their employees will conclude that these ideals are not truly valued by the organization.

Director of Diversity and Inclusion. Law firms and companies should hire individuals to direct and oversee the organization's diversity and inclusion efforts and develop the organization's diversity plan. Ideally, the role should be solely or primarily focused on diversity and inclusion and not combined with multiple other responsibilities. Further, the role should be integrated into the organization's operations, appropriately resourced, and report directly to senior management.

Parity in Benefits for LGBTQ Employees. Another foundational element is LGBTQ-inclusive benefits. Three areas should be specifically examined: benefits for transgender employees, fertility treatment for same-sex couples, and parental leave policies for same-sex couples.

For employer-provided healthcare benefits, all transgender exclusions should be removed, and clinical guidelines should permit coverage for hormone therapy, medical visits, surgical procedures, and other treatments related to gender transition. An increasing number (65%) of the Fortune 500 are now comprehensively providing transgender-inclusive health care coverage.¹⁷

Additionally, same-sex couples who are utilizing fertility treatments to create a family are often treated differently than heterosexual couples because insurance policies routinely require a medical diagnosis of infertility. While a same-sex couple may not be clinically infertile, they nonetheless are unable to biologically conceive a child together. Removing this infertility requirement makes conception services available to all employees, including same-sex couples. While many companies have not yet embraced this change, Altria, Intel, and Johnson & Johnson are several companies leading on this issue.¹⁸

¹⁶ Human Rights Campaign, 2020 Corporate Equality Index, available at https://assets2.hrc.org/files/assets/resources/CEI-2020.pdf?_ga=2.85258576.851936250.1580486136-1792851227.1578421936.

¹⁷ Id.

¹⁸ Altria Benefits, Supporting You and Your Loved Ones, (January 3, 2020), available at <https://www.altria.com/people-and-careers/Benefits/Pages/default.aspx?src=leftnav>. Intel News Fact Sheet, *Intel Announces Industry-Leading Enhancements of U.S. Benefits; Supports Diverse Needs of Working Moms and Dads*, (October 20, 2015), available at http://download.intel.com/newsroom/kits/diversity/pdfs/Intel_Expanded_Benefits_FactSheet.pdf. Johnson & Johnson, *Helping Our Employees Build Families: Enhancing Adoption, Fertility, Surrogacy & Nursing Mother Benefits* (May 5, 2016), available at <https://www.jnj.com/our-company/helping-our-employees-build-families>.

Many same-sex couples build their families through adoption or surrogacy. An organization's parental leave benefits should be provided to all new parents—maternal, paternal, adoptive, or surrogacy-assisted—regardless of how the family is formed.

Diversity Webpage. A company's or law firm's efforts on diversity, inclusion, and equality are of limited value if the organization is not communicating those efforts to its workforce and the public at large. When those efforts are not internally and externally publicized, many will doubt the organization's commitment to a truly inclusive workplace. A regularly updated, comprehensive webpage not only informs current employees and job candidates, but it also celebrates the advances the organization is making. One best practice is for the webpage to include metrics related to diverse employees, data on supplier diversity efforts, highlights of its diversity-related recruitment activities, and information on the organization's strategic diversity initiatives.

Expansion of the Talent Pool. A company or law firm must broaden its recruitment strategy if it seeks to have a diverse talent pool. A number of LGBTQ organizations host annual recruitment opportunities, including the National LGBT Bar Association's Lavender Law Conference, the Out & Equal Workplace Summit, and the Reaching Out MBA Career Expo. A law firm or corporation can also sponsor networking opportunities with LGBTQ organizations at area universities and law schools or with local LGBTQ bar associations.¹⁹ Of course, data tracking must be a part of such outreach to ensure measurable improvements in diverse hiring are occurring.

Education to Equip Management. Many corporate leaders, even those who consider themselves "progressive," may not be fully knowledgeable about the LGBTQ community. For example, when discussing the "Q" in LGBTQ, I am often asked "Isn't the term queer offensive?"²⁰ Knowledge is powerful, and the more leaders understand the LGBTQ experience, the better allies they can become.

To address these types of issues, Altria's LGBTQ Employee Resource Group ("ERG") has partnered with a local organization to create a voluntary "LGBTQ 101" workshop for executives, and we have reached over 90% of company executives. After providing basic information about the LGBTQ community, participants are asked to imagine themselves as various types of new LGBTQ employees (i.e., a transgender employee, a lesbian employee, and an employee who is gender non-conforming). They are then asked to imagine what would they hope for, what they worry about, and what the individual would want to feel welcome. It has been a powerful workshop that both educates and evokes empathy.

Going Beyond the Basics

While the basic policies, programs, and processes highlighted above demonstrate a commitment to a diverse and inclusive workplace, organizations need to move beyond mere commitment. Organizations must ensure they are actually hiring, retaining, and promoting diverse talent. Aspirations and commitments are important but are not sufficient.

Establishment of an LGBTQ Employee Resource Group. Creating an LGBTQ ERG will reap multiple benefits, if thoughtfully structured. ERGs are employee-led networks where members join together based on shared demographic factors such as gender, race, ethnicity, or LGBTQ status. ERGs can help drive change and foster a diverse and inclusive workplace, while at the same time helping the organization meet its business objectives.

¹⁹ For a listing of local LGBT bar associations, see <https://lgbtbar.org/what-we-do/affiliates/>.

²⁰ For more information about the term queer, see Juliette Rocheleau, *A Former Slur Is Reclaimed, And Listeners Have Mixed Feelings*, available at <https://www.npr.org/sections/publiceditor/2019/08/21/752330316/a-former-slur-is-reclaimed-and-listeners-have-mixed-feelings>.

But effective ERGs cannot merely be social networks. If the company or law firm is too small to sustain specific ERGs, a more general diversity ERG might be a satisfactory alternative.

ERGs are a vital component to demonstrating a commitment to diversity, inclusion, and equality. However, they are not a panacea; ERGs cannot be the sole entity within the organization advancing diversity and inclusion policies, programs, and processes. While ERGs have an extremely important part to play, senior management cannot abdicate responsibility for diversity and inclusion to ERGs. ERGs should serve as a catalyst for change, be thought leaders on diversity and inclusion, and be a sounding board for senior management, but ERGs should not be seen as the only advocates for cultural change. Leadership needs to step up and actively advocate as well.

A successful ERG allows employees to be valued, engaged, and challenged to contribute to the organization.²¹ This helps create networking and leadership opportunities for these diverse employees and also provides greater visibility with and access to senior executives. Because it allows LGBTQ employees to be a more visible part of the culture, it encourages LGBTQ employees to, as DeRay Mckesson describes it, “come out of the quiet.”²² In this way, the ERG allows individuals who have been quietly out at work to also be visibly out, where they are seen and heard as their full, authentic selves.

As one of the founders of my company’s LGBTQ ERG, I have witnessed first-hand the power of an ERG to create a better, more inclusive, and more authentic corporate culture. The ERG has empowered my company’s LGBTQ employees to be more visible, and it has encouraged sometimes difficult, but always necessary, conversations about difference, intersectionality, sexual orientation, gender identity, and gender expression. As importantly, it has inspired allies to stand up and be counted as caring about diversity and inclusion for LGBTQ employees.

Celebrate. Publicly acknowledging LGBTQ events can send a powerful message to employees, including those who do not identify as LGBTQ. In October, the LGBTQ community celebrates National Coming Out Day, and it remembers those lost to anti-trans violence on the National Transgender Day of Remembrance each November. In June, LGBTQ Pride commemorates the anniversary of the Stonewall Riots, when a group of LGBTQ individuals – led by drag queens and trans women of color – united against the discrimination they were facing on a daily basis. Pride serves as a testament to the bravery of those LGBTQ individuals who united against injustice, but it is also an acknowledgement that the struggle for full equality continues to today.

Having the organization commemorate the National Transgender Day of Remembrance in an all-employee communication, sponsor a special speaker to celebrate Pride, or host a reception for National Coming Out Day can not only make LGBTQ employees feel recognized and empowered, but it can also serve as an educational opportunity for all employees. Over the past several years, Altria has hosted Wilson Cruz, Chris Mosier, Geena Rocero, and Wade Davis for its annual Pride celebrations. Each of these Pride speakers has shared their personal journey as an LGBTQ individual, helping humanize and educate about the LGBTQ experience. For National Coming Out Day, the company has

²¹ Additional information on forming an ERG can be found at: Human Rights Campaign, *Establishing an Employee Resource Group*, <https://www.hrc.org/resources/establishing-an-employee-resource-group>; Diversity Inc., *Meeting in a Box: Employee Resource Groups* (2015), available at <http://bestpractices.diversityinc.com/medialib/uploads/2015/01/Meeting-in-a-Box-Employee-Resource-Groups.pdf>; Metropolitan Business Association, *LGBT Employee Resource Group Programming*, available at <http://mbaorlando.org/dnii/erg>; Kenneth Matos & Trenton Adams, *Best Practices For Starting An LGBTQ+ Employee Resource Group* (2017), available at <https://www.lifemeetswork.com/insights-archive/starting-lgbtq-erg-workplace>.

²² GLAAD, *#BlackLivesMatter Activist DeRay Mckesson Speaks at #glaadgala San Francisco* (November 8, 2015), available at <https://www.youtube.com/watch?v=Z15DHebDITU>.

flown the Pride flag over its corporate headquarters in Richmond, Virginia. These events serve to further demonstrate the company's commitment to LGBTQ inclusion, motivating employees at the same time.

Leadership Accountability. The leadership of corporations and law firms must not only be vocally supportive of their organization's diversity, inclusion, and equality efforts, but they must also be accountable for them. One method to drive accountability is the formation of an executive diversity council, led by the company's CEO or the law firm's managing partner and composed of other senior leaders. This council sets and governs the organization's diversity and inclusion strategy and through regular meetings serves to focus leaders' time and attention on these issues. Another, more controversial but extremely effective, method is incorporating diversity, inclusion, and equality requirements in the formal evaluation process for leaders, where their advancement and compensation is tied to certain diversity and inclusion milestones.

Self-Identification. Although each LGBTQ employee has had his or her own diverse experience, we all have one thing in common—we have each taken a journey in order to be ready to tell others who we are. Thus, all of us understand how important it is to be yourself and be included – both in life and in the workplace. While Federal laws require organizations to capture certain information related to the diversity of their workforces, there is no requirement to obtain data about LGBTQ employees.

A best-practice in this area is asking U.S.-based employees to voluntarily self-identify their sexual orientation, gender identity, and gender expression.²³ Being counted is vital to ensuring that an organization fosters a diverse workplace where everyone is able to be heard, included, and valued. A self-identification process through existing human resources systems helps an organization improve recruitment, development, and advancement of LGBTQ employees and also allows it to track progress for its LGBTQ inclusion efforts, in the same way it does for other diverse employees.²⁴

Measurement of LGBTQ Promotion & Advancement. Utilizing the self-identification data, an organization must also actively monitor promotions and advancements to ensure LGBTQ employees are not being left behind. The best diversity programs cannot help someone seize an opportunity that never materializes. Thus, an organization must use data—not anecdotal evidence—to ensure LGBTQ employees are given the opportunities to progress.

Gender Transition Framework. Law firms and companies must welcome and embrace transgender employees who are transitioning in the workplace. To ensure this occurs, these organizations should have a clear and understandable framework on how the organization responds when an employee indicates they will transition. Understandably, this may be an enormously stressful moment for the employee, and written guidelines, created in advance, will help provide structure to support a respectful and successful workplace transition for the employee.

²³ Outside of the United States, privacy laws may make self-identification programs infeasible.

²⁴ More information about self-identification can be found at: Human Rights Campaign, *Collecting Transgender-Inclusive Gender Data in Workplace and Other Surveys* (Oct. 26, 2016), available at <http://www.hrc.org/resources/collecting-transgender-inclusive-gender-data-in-workplace-and-other-surveys>; Diversity Best Practices, *Self-Identification Of LGBTQ Employees* (2015), available at https://www.diversitybestpractices.com/sites/diversitybestpractices.com/files/import/embedded/anchors/files/_attachments_articles/rr_lgbt_self-id.final_.pdf; Out & Equal, *Where Are Our LGBTQ Employees?* (2009), available at <http://old.outandequal.org/wp-content/uploads/2014/12/2009-Self-ID-report.pdf>; Kellan Baker, et. al, *How to Collect Data About LGBTQ Communities* (Mar. 15, 2016), available at <https://www.americanprogress.org/issues/lgbt/reports/2016/03/15/133223/how-to-collect-data-about-lgbt-communities>; Lynn Pasterny, Stonewall, *Do Ask, Do Tell: Capturing Data on Sexual Orientation and Gender Identity Globally* (2016), available at https://www.stonewall.org.uk/sites/default/files/do_ask_do_tell_guide_2016_0.pdf.

While the framework should comprehensively address how the company will work with an employee, it is important to remember that each employee's situation will be unique. Every step of the process must hinge on the employee's consent, and the framework should reiterate the need for privacy and confidentiality. In addition, the framework should clearly set out expectations for all involved, including the transitioning employee, the human resources department, management, the employee's immediate team members, as well as other colleagues.²⁵

Executive Leadership Programs. While LGBTQ leaders face many of the same challenges as other leaders, they do so in the context of their identity as a diverse individual. For LGBTQ employees, leading as their authentic self can seem frightening, and executive leadership programs can help such individuals understand the power of authenticity.

A number of excellent leadership courses have been developed that focus on LGBTQ and other diverse individuals, including Stanford University's Graduate School of Business LGBTQ Executive Leadership Program (focusing on LGBTQ individuals who work in corporations, non-profits, and law firms) and the Leadership Council on Legal Diversity (focusing on in-house and outside counsel who are diverse).²⁶ A company or law firm should actively encourage high-potential employees to participate in such programs and underwrite such costs as part of the employee's leadership development. Doing so indicates that the organization is investing in its LGBTQ employees and provides an opportunity for LGBTQ employees to further develop their leadership skills and expand their network.

Philanthropy and Community Engagement. Companies and law firms are often involved in national and local civic organizations and bar associations. Many contribute to these organizations, volunteer, provide pro bono representation, or have employees serve in leadership roles, such as on the organization's board of directors or steering committee. Ensuring that LGBTQ organizations are included clearly demonstrates the company's or law firm's commitment to diversity, inclusion, and equity.

Supplier Diversity. Supplier diversity initiatives ensure that minority-, women-, veteran- and, LGBTQ-owned businesses have access to procurement opportunities at corporations and law firms. A company's or law firm's supplier diversity efforts should specifically include LGBTQ suppliers. Since 2004, the National LGBT Chamber of Commerce has been the certification body that verifies that eligible businesses are majority-owned by LGBTQ individuals.²⁷ Of course, merely having such a program is not enough; the organization must use data to ensure the program is effectively engaging diverse suppliers.

Speaking Out and Standing Up. A growing number of corporations and law firms are also speaking out in favor of LGBTQ equality issues and standing up when the rights of LGBTQ people come under attack. In recent years, when discriminatory legislation has been advanced at the Federal, state, or local level, many business organizations have rightfully denounced such attacks. For example, in 2016 executives from more than 100 companies, including many Fortune 500 companies, signed an open letter requesting that the North Carolina Governor repeal anti-LGBTQ House Bill 2.²⁸ Many (but not all) of the

²⁵ For more information about transgender guidelines, see Human Rights Campaign, *Transgender Inclusion In the Workplace: A Toolkit for Employers* (2016), available at <http://www.hrc.org/campaigns/trans-toolkit>.

²⁶ For more information about the Leadership Council on Legal Diversity, see: <http://www.lclcdnet.org/>. For more information about the Stanford University LGBTQ Executive Leadership program, see: <https://www.gsb.stanford.edu/exec-ed/programs/lgbtq-executive-leadership-program>.

²⁷ For more information about the National LGBT Chamber of Commerce's supplier diversity certification program, see <http://www.nglcc.org/what-we-do/diversity-inclusion>.

²⁸ Human Rights Campaign and Equality North Carolina, Letter to Governor Patrick McCrory, available at [http://assets2.hrc.org/files/assets/resources/NC_CEO_Letter_\(3\).pdf](http://assets2.hrc.org/files/assets/resources/NC_CEO_Letter_(3).pdf).

discriminatory provisions of that legislation were later repealed, due in part to the vocal and sustained business outcry. More recently, in 2019, over 200 leading businesses, representing more than \$4.5 trillion in revenue and more than 10.4 million U.S. employees, joined the Human Rights Campaign's Business Coalition for the Equality Act, urging Congress to enact Federal anti-discrimination legislation for LGBTQ individuals.²⁹

Conclusion

There are many strategic insights and tactical actions companies and law firms can take to ensure their workplaces not only are open and welcoming to LGBTQ employees but that diversity, inclusion, and equity are ongoing business objectives and corporate obligations.³⁰ This article hopefully serves as less of a checklist and more of a motivating guide, where individual corporations and law firms build upon these guidelines to implement concrete initiatives to transform their workplaces and achieve their own successes.

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Mr. Bizzell is an authority on political compliance law and is active in the compliance legal community. He chairs the Conference Board's Committee on Corporate Political Spending, a committee of leading American corporations dedicated to accountability, education, and engagement on issues of corporate political activity. For four years, he served as co-chair of the Conference Committee for the Council on Governmental Ethics Laws ("COGEL"), a professional organization of government officials with responsibilities or interests in governmental ethics, elections, campaign finance, and lobby laws. In 2018, COGEL awarded Mr. Bizzell its highest honor, the COGEL Award, for making a "demonstrable and positive contribution to the fields of campaign finance, ethics, elections, lobbying and freedom of information over a significant period of time."

Mr. Bizzell is extremely active in promoting diversity, equity, and inclusion within the legal and corporate communities. Currently, he serves as President of the National LGBT Bar Association, the leading association for LGBTQ lawyers, judges, and other legal professionals. In both 2017 and 2018, he was named by London's Financial Times as one of the 100 worldwide OUTstanding Leading LGBT+ Corporate Executives for his work on diversity and inclusion issues. Chambers and Partners also named him the 2019 In-House LGBT+ Equality Lawyer of the Year for his dedication and commitment to LGBTQ diversity programs and his efforts to advance LGBTQ professionals in the law. He is a

²⁹ Human Rights Campaign, *HRC Announces Unprecedented Support of the Equality Act from 200+ Leading Businesses*, available at: <https://www.hrc.org/blog/hrc-announces-unprecedented-business-support-for-the-equality-act>.

³⁰ Other helpful resources include: American Bar Association Commission on Sexual Orientation and Gender Identity, *Best Practices Promoting LGBT Diversity* (2011), available at https://www.americanbar.org/content/dam/aba/administrative/sexual_orientation/sogi_best_practice_guide_1_gbt_authcheckdam.pdf; Great Place to Work and Pride at Work Canada, *Beyond Diversity: An LGBT Best Practice Guide for Employers* (2017), available at https://www.greatplacetowork.ca/images/storage/2017_white_papers/prideatwork_greatplacetowork_final_digital.pdf.

2014 LCLD Fellow and is a co-founder of Altria's LGBTQ Employee Resource Group, Mosaic, where he chairs its Culture, Inclusion, and Connection Committee.

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GIVING FEEDBACK

Good Feedback Is a Two-Way Conversation

by [Joe Hirsch](#)

June 01, 2020



Image Source/Getty Images

Getting others to accept our feedback can prove challenging, especially when it's critical. Worried that their feedback may lead to hurt feelings or diminished productivity, managers resort to face-saving techniques like the “praise sandwich” that end up doing more harm than good. The result is a tenuous feedback culture built largely upon evasion, confusion, and self-delusion.

This dynamic can change with a better message — and a bolder mindset. Based on my work with leadership teams, I've found that when performance conversations are powered by partnership, the landscape shifts. Not only do managers enjoy better relationships with their teams, but their feedback may even produce greater joy, not fear.

Rather than relying on a feedback hierarchy, managers should consider a partnership model that distributes power and increases two-way conversation with their employees — leading to a more authentic and revealing feedback experience that fosters trust, flows with the rhythm of work, and sets the conditions for positive, lasting change. It's a humbler approach to managing people that focuses on asking questions, not giving orders. I call it the difference between “window gazing” and “mirror holding.”

“Window gazing” is a process of see-and-tell. Ask two people gazing out the same window to describe what they see, and you're likely to get a pair of perspectives that are substantively different but remain equally valid. Not so in the context of work, where the imbalance of power allows only one view — the manager's — to prevail. This limited picture of performance is often riddled with subjectivity and bias, as managers ignore, distort, and overlook details related to an employee's work. That view becomes muddled over time, often resembling a “forgetting curve” punctuated by a sharp initial drop, followed by a slow and steady loss. While managers fumble over the past, employees are forced to sit in judgement, stuck in a present they can't wait to end.

That changes with “mirror holding,” which offers a dramatic shift in the tone and trajectory of feedback conversations. Instead of telling their employees what to see, managers guide them where to look. They engage employees in thoughtful conversation about their current strengths, future goals, and how to bring those elements closer in line. Rather than offer directives, managers ask probing questions that help them better understand the picture of work and entrust their employees with opportunities to shape the way forward.

In my work with leaders at all levels, I've seen the power of a humbler approach. Mirror holding enlarges employees' perspectives while expanding their opportunities for dialogue and reflection. It relieves managers of the prescriptive and often uncomfortable rituals of feedback — a hasty run-through of recent accomplishments, followed by a much longer list of deficits. And it transforms managers into people champions who actively promote the growth and agency of their employees. If the sign of a good leader is someone who creates other leaders, then mirror holding is the mark of transformational leadership.

Making the transition from window gazing to mirror holding takes deliberate practice, but it's something every leader can do with the right amount of effort and intent. Here are a few recommendations for developing more mirror-holding in your touchpoint conversations:

Ask “hero questions”

Unlock the potential of your employees by asking “hero questions” that focus on their strengths and stories of success. These questions cut to the heart of employee experience — how individuals perceive their competencies and contributions.

Some of my favorite hero questions include:

- Tell me about a time this month you felt energized.
- What have you learned about yourself from working on this project?
- What strengths have you found most useful on this project?
- Who have you recently helped, and what difference did it make in their work and yours?

Asking employees to look back at these peak moments helps managers better understand what it took to get there — and, more importantly, what it will take to get there again.

Diagnose challenges

When employees hint to a challenge, pay attention to their cues. Is this person holding back? What does that individual's body language and tone of voice convey? This process of scanning and listening can alert managers to the unseen emotional toll of work and how it

is affecting performance. Try to uncover the employee's perception of the challenge and how to address it with these prompts:

- What outcome are you trying to achieve?
- What is happening? Why do you think it's happening?
- What have you tried so far? How have you handled similar challenges in the past?
- Have you tried to resolve this challenge? What happened as a result?

Helping others recognize work challenges can provide the first measure of relief. When issues are brought into the open, both sides gain clarity and can begin working towards a shared solution.

Shape the path

If performance is a journey, then it's the manager's job to help shape a path towards commitment. Once employees suggest a way forward, managers should guide their next steps. This steers the conversation towards actionable progress, making feedback more concrete. Try closing the feedback exchange with questions like:

- How do you think you'll act on this?
- What is holding you back from achieving your goals?
- What would happen if you tried this?
- How can I help you recreate the conditions of your success?

The best feedback helps others understand their strengths and provides the encouragement and guidance to build on those strengths. Mirror holders set the conditions for positive and lasting change. Making that small adjustment in your mindset can produce a world of difference in your message — and just might help others see themselves in an entirely new way.

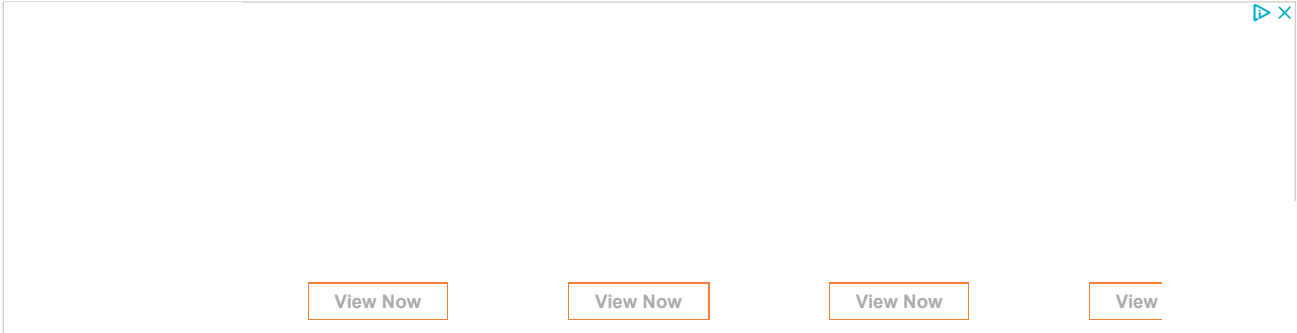


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Compassionate Feedback Vital to Building a Modern Firm

The yearly review is archaic. Compassionate and effective feedback is vital to gaining and keeping our highest form of capital—human capital—and building a modern firm.

By **Lauri A. Kavulich** | September 29, 2020 at 12:51 PM

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Lauri Kavulich of Clark Hill.

Feedback is important to all employees and employers alike. It creates the foundation upon which trust, and growth are built. However, a recent Gallup poll found that only 26% of employees strongly agree that the feedback they are getting is helping them improve their work. Companies and law firms must create a feedback system that allows the employees to grow and move forward and assists the business to grow as well.

In my dual roles as an employment lawyer and as managing partner of the Clark Hill Philadelphia office, I deal with employee reviews and feedback almost daily. I have seen all types of reviews when I represent employers in termination proceedings. In

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my role as a law firm leader, I do my best to model constructive feedback given so that the employee understands we care about them. Feedback is crucial to their development, even if the feedback is perceived as negative.

The face of employee feedback is changing dramatically and in a way that will benefit both employees and employers in the long term. Informal reviews and demand-based critiques are replacing the dreaded annual performance review, and individualized feedback replaces universal metrics. In a Harvard Business Review article titled "The Performance Management Revolution," the authors discuss the revolution that is taking place and why. The changes echo the tech industry's agile manifesto where change is met with adaptability, and efficiency met with creativity.

The monolithic system of providing annualized reviews of employees based upon supervisor feedback and universal metrics originated in the 20th century. The military first adopted the system as a method to identify future officers from the enlisted ranks but became famously used by Jack Welch at General Electric through his forced ranking system. Welch's system sorted employees into three categories, good, average and fired. Parallel to Welch's implementation of the system of objective reviews were the antidiscrimination laws coming into effect in the late mid-20th century. For employers, the review system could track objective feedback of employees, providing documentation of employment decisions when faced with liability. Personal computers and software offered managers a new platform for tracking employee performance and feedback. This system of feedback and performance has largely been the norm, at least until now. Organizations are moving away from the centralized feedback process in favor of a more personalized touch. Regular conversations about performance and development change the focus of the review to building the workforce each organization needs to be competitive.

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If delivered effectively, feedback should be valuable to employer and employee alike. From the employee perspective, feedback offers a sense of the employee's role in the organization and identifies opportunities for growth. For the employer, feedback can be a reflexive experience where the employer can understand their own areas for growth. Employers also benefit by learning what employee goals are and can help motivate employees by establishing new workplace goals. At its most effective, evaluations unify goals across the organization and increase productivity. At their least effective, evaluations are disliked and waste everyone's time (sometimes up to two-million hours per year, according to a Deloitte study).

So how can evaluation be done effectively? Simple—frequency, honesty and empathy. Frequent informal evaluations are taking the place of the old-fashioned annual performance reviews. It's not that hard to imagine why—who likes seeing their year's accomplishments and shortcomings summarized in a single meeting?

When an annual review is the only method of employee evaluation, it turns into a stress-inducing event where employee performance can decrease in the period leading up to the review.

Managers or supervising attorneys can increase the frequency of feedback through regular informal check-ins. They can start simple email threads with the employee asking how work has been going and can note any improvements to be made with actionable steps. Or, managers can host impromptu discussions with the employee, followed by a brief email summary of the conversation. For knowledge employees whose work is increasingly project based, managers can check in after each project for debriefing. The end of a given project offers managers organic moments to review an employee's performance before the next project is fully underway.

In another Harvard Business Review article titled, "What Good Feedback Really Looks Like," the author discusses the importance of both positive and negative feedback based upon research performed at Harvard's Center for Creative Leadership. The authors argue that only focusing on strengths lull employees into believing that there are no areas in which to improve. "By presenting subpar performance more positively than they should, managers make it impossible for employees to learn, damaging their careers and, often, the company," Michael Schaerer and Roderick Swaab, (<https://hbr.org/2019/10/are-you-sugarcoating-your-feedback-without-realizing-it>) wrote in another Harvard Business Review article titled "Are You Sugarcoating Your Feedback Without Realizing It?" Instead of avoiding negative feedback, the employer needs to focus on how to deliver negative feedback in ways that minimize the threat response.

Honesty, above all else, might be one of the most crucial aspects of a good employee evaluation. It is only human to wish to say only positive things about others. Unfortunately, this is not always the practice. In the context of an employee evaluation, honesty helps both the employer and employee come to a common understanding of the employment relationship. It allows the employer to provide tangible areas where further development is required and does not make the reviewer a "bad guy." Employees want this too. Younger employees are seeking more guidance and instruction than ever before, and they value on-the-job development opportunities. Honest feedback gives employees the genuine reflection they want and need in order to grow as employees.

What is an honest review? Specific examples of performance, complete with dates. Honest reviews should also be objective. Refer to the employee's demonstrated ability without calling out the character of the individual. Specific and demonstrated conduct is objective and more useful in setting goals. Subjective evaluations of personality or traits are likely to be perceived by the employee as an attack and will ultimately be counterproductive to improving performance. Subjective evaluations are just that—subjective. They reflect on the reviewer as much as they reflect on the employee and might not present a realistic narrative of the situation.

Honesty is also a crucial aspect in managing liability. Patty McCord, chief talent officer at Netflix aptly said, "People sue their employers because they think they've been treated unfairly ... because they weren't told the truth when they should have been about their performance." Many labor and employment laws are subject to some sort of burden-shifting scheme. Under these schemes, an employee must

establish a *prima facie* case against the employer. The burden then shifts to the employer to prove some legitimate non-discriminatory reason for the termination. In legitimate terminations, the employer will need to demonstrate the terminated employee's underperformance in an objective sense. Honest evaluations which illustrate instances of underperformance will go a long way in justifying the employer's decision to terminate the problem employee. If managers decline to record negative performance because of the discomfort it brings, the employer is in a poor position to justify their negative employment decision.

An effective performance evaluation needs to be heard and internalized by the employee. This is only possible through compassion and empathy. A review that highlights an employee's flaws without a degree of compassion serves no more than to alienate an employee. Where an employee feels attacked, they are less likely to internalize the feedback, and less apt to effect a change. The carrot is better than the stick.

Empathetic evaluations aim to understand where the employee is coming from. Be curious, and understand why the employee is underperforming. Listen to the employee's account of the underperformance without passing judgment. Then, describe your position, what you have seen, heard or measured—focusing on the problematic behavior, rather than the employee's character. Explain how the behavior affects productivity and offer actionable steps for improvement. Actionable steps to improvement are among the best empathetic methods of providing feedback. Criticism without a plan of action sounds like chastisement and does not offer the employee room to grow. Finally, give compliments when due. Employees need to hear about their strengths and how they impact the organization. Positive feedback is an instrumental piece of the growth process. It demonstrates that managers see the whole person and fosters a sense of inclusion.

No matter the form performance evaluations take in the future, these elements will remain a key competent in effectively providing feedback. Done effectively, employee evaluations can be more than an administrative formality but can represent a true asset that identifies new value in an existing talent pool. Frequency, honesty and empathy can help your organization draw the best from employees, helping them identify crucial areas for development. Human capital is our only capital, and effective and compassionate evaluations go a long way toward developing and growing our capital.

Lauri A. Kavulich *is the member-in-charge of the Philadelphia and Wilmington offices of Clark Hill. As a member of the litigation and labor and employment groups, she represents both public and private clients. She is first and foremost a litigator with a focus on labor and employment, and frequently defends clients in front of juries in a variety of cases from sexual harassment and discrimination to commercial litigation and antitrust.*

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The five characteristics that were discussed in Part One were that winners are: goal setters; self-motivated; strategic; positive, and well-prepared. We conclude this month with the final five attributes.

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