



Bridging the Gap in the Legal Profession

By Diane S. Davis

Firms have a responsibility to recognize the worth of their women lawyers and to develop programs that will be effective in promoting highly qualified women lawyers to the highest levels of leadership.

Retention, Promotion, and Compensation of Women Attorneys



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In the last four decades, the legal profession has changed dramatically in the gender composition of law school attendees and members of the bar. Kenneth Glenn

Dau-Schmidt, Marc Galanter, Kaushik Mukhopadhyaya,

& Kathleen E. Hull, *Men and Women of the Bar: The Impact of Gender on Legal Careers*, 16 Mich. J. Gender & L. 49 (2009). Since the 1980s, women have comprised over 40 percent of law students and law graduates in the United States. *Id.* Between 1970 and 2000, the number of women lawyers increased from approximately 10,000 to almost 300,000. *Id.* The presence of women lawyers has changed from a few valiant crusaders to approximately equal representation with men. *Id.*

Although the visible presence of women in law schools and their rate of graduation are to be applauded, recent studies continue to show that progress still needs to occur in the retention, promotion, and fair compensation of women attorneys in firms and companies. Many firms and companies have created and implemented workplace policies that emphasize the importance of work-life balance such as flex-time, part-time work arrangements, extended maternity leave, and childcare assistance. Yet, lawyers who choose to use such policies are often negatively affected in their salary and promotion status. Pay gaps remain a pervasive issue with the smallest pay gaps between unmarried men and unmarried women attorneys while the largest gap remains between men and women attorneys parenting young children. This article will address the gender pay gap, the role of the corporate client in bridging the gap of inequality, procedures that each firm can implement to attract, retain, and promote quality women attorneys, and how women attorneys can reinvent and develop successful careers after a period of transition such as motherhood.

The Underlying Truth: The Numbers Do Not Lie

Despite equality in presence by numbers to men at the beginning stages of a career in the legal profession, women lawyers remain underrepresented in progress over time within the legal profession. In February 2014, the National Association of Women Lawyers

(NAWL) released data from its Eighth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms. The purpose of the survey was to track the professional advancement of women in the nation's 200 largest law firms by comparing the careers and compensation of men and women lawyers at various stages of practice and reviewing data addressing the issues that can affect career advancement. In the report, NAWL noted that there is a disproportionately low ratio of women who are promoted to equity partnership at large firms (less than 20 percent) in comparison to the percentage of law school graduates who are women (over 40 percent). Karen M. Richardson, *Report of the Eighth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms*, NAWL (Feb. 25, 2014), <http://www.nawl.org/p/bl/et/blogid=10&blogaid=56> (last visited Feb. 11, 2015). The report also mentioned that female minorities comprised only 2 percent of the equity partners within the typical American Law 100 and 200 law firms. *Id.* In addition, many of the firms did not report data about compensation of the men and women lawyers in the firms. *Id.*

The National Association for Law Placement (NALP) also released findings in 2014 regarding the representation of women and minorities among the equity partners at multi-tier law firms in the United States. *The Representation of Women and Minorities Among Equity Partners Sees Slow Growth, Broad Disparities Remain*, NALP Bulletin, Apr. 2014, available at <http://www.nalp.org/0414research> (last visited Feb. 11, 2015). The findings mirrored NAWL's conclusions. The data analyzed by NALP reflected that in 2013 only 16.5 percent of the equity partners at multi-tier law firms were women and only 5.4 percent of the equity partners were minority women. *Id.* In July 2014, the American Bar Association Commission on Women in the Profession released its publication, *A Current Glance at Women in the Law*. This data

revealed that the representation of women in law schools and law school graduates remained over 40 percent, but women represented only 21 percent of the general counsel of the Fortune 500 companies. See also MCCA's 14th Annual General Counsel: *The Continuing Climb: Diverse GCs Power Up*, *Minority Counsel Association*, September/October 2013. On average, these women

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lawyers' weekly salaries were 78.9 percent of the weekly salaries earned by their male counterparts. In addition, at the median, women equity partners in the 200 largest firms earned 89 percent of the compensation earned by their male counterparts. Richardson, *supra*.

In August 2014, *The Working Mother* magazine in conjunction with Flex-Time Lawyers Association also released its latest list of the "50 Best Law Firms for Women." Although 46 percent of the associates at the featured firms were women, only 29 percent of the non-equity partners in the firms were women. Working Mother & Flex-Time Lawyers, *Best Law Firms for Women 2014, Executive Summary*, available at http://www.wmmsurveys.com/2014_WorkingMother_and_Flex-TimeLawyers_Best_Law_Firms_for_Women_Executive_Summary.pdf. Moreover, only 19 percent of the equity partners at the firms were women. *Id.* Representation of women of color at the 2014 best law firms also decreased, with minority women representing only 12 percent of the associates

and 2 percent of the equity partners at the featured firms. *Id.*

Gender Pay Gap: The Motherhood Penalty Versus the Fatherhood Bonus

More than 50 years since the enactment of the Equal Pay Act of 1963, the gender pay gap among men and women persists, including in the legal profession. The act

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mandated that an employer was prohibited from paying unequal wages to men and women who had substantially equal skills, effort, and responsibility in their positions under similar working conditions within the same establishment. For comparison purposes, the applicable jobs did not have to be identical, but substantially equal in content. Notably, women make up almost half of the workforce and serve as the breadwinner in four out of 10 families, but they continue to earn considerably less income than men. Additionally, the smallest pay gap is between unmarried men and women attorneys while the largest gap is between men and women attorneys who are also parents of young children.

Although there are other ways to measure the degree of gender equality, the comparative ratio of earnings between men and women is considered one of the key indicators of socioeconomic gender equality. Claudia Goldin, *A Grand Gender Convergence: Its Last Chapter*, 104 *Am. Econ. Rev.* 4 (2014). The “gender pay

gap” is the difference in the median earnings of men and women, and usually it is reported as either the earnings ratio between men and women or as an actual pay gap. The American Association of University Women, *The Simple Truth About the Gender Pay Gap* (2014). In 2013, female full-time workers made only 78 cents for every dollar earned by men, a gender wage gap of 22 percent. *About Pay Equity and Discrimination*, Institute for Women’s Policy Research, <http://www.iwpr.org/initiatives/pay-equity-and-discrimination> (last visited Feb. 11, 2015). Women, on average, earn less than men in virtually every single occupation for which there is sufficient earnings data for both men and women to calculate an earnings ratio. *Id.* According to a Gallup poll released October 13, 2014, both men and women identified the gender gap as a pressing and important issue. More importantly, 41 percent of the women and 37 percent of the men that were polled considered “equal pay” or “fair pay” to be the most important issue facing working women. Peter Burrows, *The Gender Pay Gap Isn’t Closing. Just Ask AMD’s First Female CEO*, Bloomberg News (Oct. 15, 2014), <http://www.bloomberg.com/news/2014-10-15/the-gender-pay-gap-isn-t-closing-just-ask-amd-s-first-female-ceo.html> (last visited Feb. 11, 2015).

The smallest gender pay gap is found among unmarried men and women. Michelle Budig, *The Fatherhood Bonus and the Motherhood Penalty: Parenthood and the Gender Gap in Pay* (2014). However, figures show that married mothers of minor children continue to experience the largest pay gaps. *Id.* Despite the increased participation in childcare by men, women still continue to shoulder the primary responsibilities of domestic and child-care responsibilities. Career interruptions such as leave for childbirth or raising children are associated with reduced earnings in women. Stephanie R. Thomas, *The Gender Pay Gap: A Closer Look at the Underlying Causes*, Bloomberg Law Reports (2010). Significantly, how parenthood affects the earnings of a woman will often determine whether she chooses to drop out of the workforce. Megan Beyer, *Gender Balance in the Workplace: Profit from Parity*, Huffington Post (Dec. 9, 2014), http://www.huffingtonpost.com/megan-beyer/gender-balance-in-the-wor_b_5955616.html (last visited Feb. 11, 2015).

The effect of parenthood differs between men and women and is often referred to as “the motherhood penalty versus the fatherhood bonus.” Fatherhood typically results in an increase in earnings while the earnings for a mother typically decrease with the birth of each additional child. Budig, *supra*. Studies indicate that with fatherhood a man tends to experience a bonus through promotions and salary increases whereas a working mother may experience a penalty of lateral moves and stagnation in earnings. Beyer, *supra*. This data is especially troubling considering that some studies suggest that 40 percent of American households depend primarily on the mother’s salary. *Id.*

The motherhood penalty is nestled in contemporary and unsupported cultural beliefs or employer expectations that a working mother will now engage in an intense devotion that will compel her to prioritize the needs of her dependent children over all other activities, resulting in lower work commitment and poor performance. Employers then may consciously or unconsciously discriminate against mothers in salaries and promotions. Budig, *supra*.

Unlike the working mother, the image of a good worker and a good father are not seen as culturally conflicting. Employers, co-workers, and hiring managers may treat male employees more favorably based on their fatherhood status. *Id.* For instance, fatherhood may be viewed by potential and current employers as an indicator of maturity, commitment, dependability and stability. *Id.* Certain studies have also suggested that fathers are less scrutinized for poor performance and provided additional opportunities to showcase their skills and abilities than childless men. *Id.*

Negotiation for Pay Increases

Another potential cause for the gender pay gap is the level of willingness to engage in salary negotiations. Budig, *supra*. Studies indicate that many women feel uncomfortable asking for a particular salary and are less likely to engage in negotiations to improve upon the initial compensation offer. Lisa Quast, *Job Seekers: 8 Tips to Negotiate Your Starting Salary*, Forbes (Mar. 31, 2014), <http://www.forbes.com/sites/lisaquast/2014/03/31/job-seekers-8-tips-to-negotiate-your-starting-salary/> (last visited Feb. 11, 2015). However, negotiating the ini-

tial salary, according to Sue Thirlwall, the CEO of Miniluxe, should be the easiest and most productive time to do so as the stakes are lower. Lydia Dishman, *The One Career Mistake That'll Set You Back \$500,000*, *Fast Company* (Nov. 12, 2012), <http://www.fastcompany.com/3003018/one-career-mistake-thatll-set-you-back-500000> (last visited Feb. 11, 2015). Thirlwall recalled when she accepted her first job with a company after receiving her MBA from Harvard. She learned that her male counterparts were being paid approximately \$5,000 more than her despite the fact that she had more experience in management and leadership roles. Although she attempted to negotiate, the firm would not increase her salary. Thirlwall took the position but still regrets that decision because she truly believes that she continued to lag behind her male counterparts in compensation as a result of accepting this initial lower salary. This unwillingness to negotiate the initial salary and simply settle for what was offered will often result in a pattern of low pay raises during a woman's tenure with a firm. One study has shown that women could lose more than \$500,000 by the time they reach age 60 if they fail to push for proper starting compensation. *Id.*

One factor in the negotiation issue is that women often take a "reason and logic" approach to negotiations. Women assume that if more pay was available then the organization would have offered it; therefore, the offered salary must be the best that the organization can offer. Dishman, *supra*. Women also tend to believe that their hard work will be noticed and result in a raise without having to ask for one. *Id.* However, the study referenced above indicated that his approach can backfire and result in deferred salary negotiations and discussions becoming emotional events as opposed to business decisions. *Id.*

Role of a Firm in Retaining and Promoting Women Attorneys

The retention and promotion of women lawyers is an important issue that firms must address. According to the 2014 NAWL Report, 38 percent of the firms that participated in the study identified work-life balance issues as one of the obstacles to the retention of women lawyers. Moreover, as far as the greatest obstacles to the reten-

tion of women and promotion to leadership positions in firms, 22 percent of the firms surveyed believed that lack of business development opportunities is the greatest obstacle to retention of women; 13 percent considered the lack of mentors or women in leadership roles as the greatest obstacles in retention and promotion of women lawyers; and 11 percent of the firms believed the difficulty in obtaining partnership status is the greatest obstacle to the retention of women lawyers.

To attract, retain and promote quality women attorneys, firms have a responsibility to implement policies that will allow women attorneys to move into leadership roles in a firm and maintain a fulfilled and balanced life. Recently, high-profile women such as Sheryl Sandberg, COO of Facebook and author of *Lean In: Women, Work and the Will to Lead*, have focused the discussion on the often conflicting demands of career and family. This discussion is welcome because it dispels the widely accepted myth that a woman's decision to resign from a company or firm can only be rooted in her personal commitment to be devoted wholly to her partner or children at the expense of her career and that a woman becomes less driven and ambitious after becoming a mother. While Sandberg argues that women can demand a "seat at the table" if they simply seize the opportunities and not underestimate their abilities, others, such as Anne-Marie Slaughter, the first female director of policy planning at the U.S. Department of State and former dean of the Woodrow Wilson School of Public and International Affairs at Princeton University, recognize that there are situations in a woman's career when balancing the demands of a profession as well as family life are no longer attainable regardless of confidence and ambition levels and the willingness of significant others to assist in achieving a balance. Petra Gordon, *The Other Half*, *Law Practice Today* (Amer. Bar Ass'n), May 2013, available at http://www.americanbar.org/content/newsletter/publications/law_practice_today_home/lpt-archives/may13/the-other-half.html (last visited Feb. 11, 2015).

How can firms take on or expand efforts to provide an atmosphere conducive to finding a work-life balance? First, firms must embrace flexibility and not simply use the concept as a hiring tool to attract

a valuable attorney. Many companies now implement flexible alternative work arrangements that will allow women lawyers to fulfill their professional responsibilities without sacrificing their ability to meet the demands of their personal obligations. Companies and firms must also take the necessary steps to dispel notions that a lawyer will be penalized professionally if

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the lawyer chooses to accept a more flexible work schedule that will likely result in less time in the office. Gordon, *supra*.

Firms must also recognize that assisting their lawyers with childcare issues is an important step in the retention and promotion of lawyers, particularly women lawyers. Many of the firms identified as the "50 Best Law Firms" offered backup childcare at facilities, assistance with childcare for sick children, and subsidized in-home backup childcare. Investing in the resources that allow women lawyers to provide safe and quality childcare to their children will ultimately result in women lawyers being able to lead a balanced and fulfilled personal and professional life. Cathy Benton & Nicole Brown, *Taking Care of Lawyers Taking Care of Children*, *Business Law Today* (Amer. Bar Ass'n), Jan./Feb. 2008, available at <http://apps.americanbar.org/buslaw/blt/2008-01-02/brown.shtml> (last visited Feb. 11, 2015). Firms also should identify appropriate mentor-mentee relationships so women lawyers can connect with other lawyers for

professional guidance and moral support during periods of transition.

Finally, firms are able to retain women lawyers by investing in their careers through the creation of opportunities for those lawyers to develop as successful rainmakers and be more involved in critical decision making positions at a firm. Firms identify the lack of rainmaking as one

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of the reasons women are not promoted, yet the firms have not created programs to assist the women lawyers in making the necessary contacts and creating relationships that could translate into client relationships. For example, the adequate representation of women lawyers on firm committees that address hiring and salary issues will result in the implementation of gender neutral policies that allow women lawyers to connect, develop, and continue to engage in the overall success of a firm even during parenthood.

Role of the Corporate Client in Bridging the Gap

The corporate client also plays a role in reaching pay equity and advancing the career of qualified women lawyers. First, clients should educate their outside counsel regarding their diversity goals. Many corporations have identified the promotion of diversity as a primary objective; therefore, their outside counsel should reflect this same level of diversity. Corpo-

rations should consider engaging in productive dialogue with their outside counsel so that the firms understand that having women and minority lawyers represent the legal needs of the corporation is not only desired, but necessary.

Moreover, corporations have a role in advancing women in their careers when they provide opportunities for women lawyers to compete for business and see that those women receive the proper credit for that business. Many corporations are using small, minority, and women-owned firms that offer high-quality services by implementing an inclusion initiative to ensure that diverse law firms are among the outside counsel. Often corporate clients rely on the recommendations of other inside counsel when seeking additional outside counsel. Instead of relying on this particular pipeline solely, corporate clients should consider other opportunities to engage women lawyers, such as inviting women lawyers to present CLE programs for their law departments. This step would create an opportunity for women lawyers to interact directly with in-house counsel and obtain and develop a successful book of business. This in turn would be a pathway for women lawyers to the professional success and promotional opportunities that many of their male counterparts have obtained.

Defining a Career and Succeeding in the Midst of Transition

Although the retention and promotion of women lawyers in the legal profession is an important objective for firms and corporate clients, women lawyers must also remain vigilant in their efforts to achieve their professional goals. Below are a few steps that have been helpful to women attorneys as they redefined and developed their careers.

Be Clear and Firm with What You Desire

First, you must fully understand your values and what is important to you. Wendy L. Werner, *Determine Your Work-Life Balance*, Law Practice Magazine (Amer. Bar Ass'n), May/June 2012, available at http://www.americanbar.org/publications/law_practice_magazine/2012/may_june/career-steps.html (last visited Feb. 11, 2015). It is important that you identify a list of the commit-

ments that you are willing to undertake both at work and personally. When you have a clear understanding of what you would like to accomplish both personally and professionally, then you can firmly identify and discuss the goals with others, especially your employer. As you compile this list, make certain to identify the order of commitment. Therefore, if you wish to determine whether to accept new professional responsibilities, including a new position or a new client, you are now able to assess whether this new opportunity will conflict with your priorities. Once the commitments are identified and you fully understand their order of priority, it is time to communicate both honestly and openly with those involved at home and at work. Work toward not feeling uncomfortable asking a potential or a current employer about the amount of time that an employee is expected to work late in the evenings or on the weekends before deciding to accept a new position or assignment. There are consequences to every decision but being firm and clear with your values will allow you to continue to develop professionally while respecting your personal commitments.

Even if You Work Part-Time and Have Less Responsibilities, Always Convey a Strong Work Ethic

A woman lawyer must continue to focus on producing quality work regardless of the hours that she works. Keep in mind that each assignment is an opportunity to engage and connect with a potential client. All attorneys, including part-time attorneys, should produce superior work product that meets the needs of the client. E. Lynn Grayson, *Flexible Hours Policies: Success Strategies for You and Your Law Firm*, The Catalyst (IL State Bar Ass'n), Oct. 2006, available at <https://www.isba.org/committees/women/newsletter/2006/10/flexiblehours-policies-successstrateg> (last visited Feb. 11, 2015). The quality of the legal expertise that a woman attorney provides should not diminish simply because she has a reduced workload.

Focus on Professional Development, Including Obtaining New Business Relationships

Professional development must become part of your daily routine. Become orga-

nized and establish a tracking system so that you can keep adequate track of the individuals and the companies that you contacted and an appropriate date to follow up with that contact. Seek new opportunities through social media or publications to showcase your legal knowledge on a regular and consistent basis.

Remain Flexible

As much as we desire flexibility from our employer, we must also be willing to remain flexible. Be open and willing, if possible, to make the necessary arrangements if needed to stay late during the evenings or to work on the weekends to complete a motion or a brief or to prepare for a deposition or hearing. Part-time and flex-time lawyers have a responsibility to manage the unexpected, in order to handle pertinent client issues even if the situation requires the attorney to rearrange her schedule. Grayson, *supra*.

Make It Clear that Even as a Working Mother You Are Available and Open to Participating in High-Demand Assignments

Often there is a perception that working mothers are no longer able to make the necessary time commitments to a long-term or demanding assignment. Continue to convey the message to your employer or supervising attorneys that you are interested and available to work on demanding assignments. Be willing to identify and to pursue opportunities to participate in firm governance, especially those opportunities related to recruiting and hiring new recruits as well as workplace policy.

Confidently Negotiate

Women often expect less than they should be paid. Be willing to negotiate boldly and professionally for the salary that you desire. Before entering into negotiations, do the appropriate research regarding the salary for attorneys with your comparable years of experience in your jurisdiction and practice area.

Conclusion

Although balancing the demands of parenthood and the legal profession can be stressful and challenging, opportunities exist for women lawyers to continue to develop and

to succeed in the profession. Firms have a responsibility to recognize the worth of their women lawyers and develop programs that not only retain those lawyers but will be effective in promoting highly qualified women lawyers to the highest levels of leadership in a firm with compensation comparable to their male counterparts. As our clients recognize diversity, it is necessary that our legal departments embrace and reflect that diversity. Although firms have a responsibility to attract and retain quality women attorneys, women lawyers also bear responsibility for the direction of our careers. Be honest with the demands and schedule that you are willing and able to accept. Recognize that rain-making and developing sustainable business are instrumental to your professional success and continue to identify opportunities to make those professional connections. More importantly, know your professional worth and value and be willing to negotiate for the salary and the work schedule that you desire. 