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What the Partner Pay Gap Tells Us About Bias

OPINION: Woman partners report in a new survey that they may not get fair credit for business they bring in.

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A recent national survey of law firm partners revealed an astonishing 44 percent gender wage gap between male and female partners. This huge pay differential has been attributed — both by the survey's author and by many in the media — to origination credit, the measure of how much business partners bring into their firms.

According to the survey, male partners reported 50 percent higher average originations than female partners. But the fact that women report lower origination credit is often the result of gender bias.

HOW BIAS EFFECTS PRACTICE

1: The study finds, unsurprisingly, that equity partners originate more. The study does not break down the gender of equity partners in its sample, but in most law firms, relatively few women are equity partners. Studies document how bias creates difficulties for women to advance to partnership: women don't have the same access to networks and sponsors, and men are admitted to partnership based on business-development potential whereas women have to actually have the clients in hand.

2: Women are pressured into remaining as service partners. "But my clients love you," women are often told — note the my — when they bring up their need to develop their own client base. Women often pressured to be good team players who do the work but don't demand the glory.

In a forthcoming survey developed and conducted by the Center for WorkLife Law for the American Bar Association's Commission on Women and the Minority Corporate Counsel Association, only 41 percent of white male lawyers, but 60 percent of women lawyers, reported this pressure.

3: Women are stymied when they try to bring in business. Women persistently report being required to turn down work because accepting it would conflict a male partner out of accepting work from a different client.

One woman reported this even when her client's matter was an order of magnitude larger than the male partner's.

4: Women may not get credit for the business they do bring in. We hear persistent reports of men reluctant to split origination credit with women, even if men regularly split credit with other men. Sometimes this takes the form of outright bullying.

A 2010 survey of female lawyers found that almost one-third (27 percent) of white female equity partners reported "feeling that a partner had tried to intimidate, threaten, or bully them into backing down in a dispute over origination credit."

For female partners of color, that number was even higher (36 percent). The same survey found that more than 80 percent of women partners reported being denied their fair share of origination credit in the past three years.

5: Women partners report that their male counterparts receive credit they may not have earned. "Some of the young male partners are just handed shared origination because 'their brains also brought in the client.' I have not had the same level of shared financial opportunity, despite more years of helping to build the very clients whom I requested to share," said one respondent to the 2010 survey.

This may happen because partners assume that other men have families to support, or because partners have or want established relationships with the young male partners.

6: Women report they are not given the same opportunities. The 2010 survey found that more than half of women equity partners reported being used as diverse "eye candy" on pitches but then not receiving origination credit or work resulting from successful pitches.

7: Lack of succession planning hurts women. Without a formal process in place for succession planning, clients continue to be passed down from male partner to male partner, without regard for who is actually doing the work for that client.

8: Women who have babies are artificially penalized. Many firms count origination-related metrics as "zero" for the months women are on maternity leave, which artificially depresses their compensation for a year, and in some cases two — per baby.

No wonder women lawyers are upset about compensation. In the forthcoming ABA/WLL/MCCA survey, 66 percent of white men but only 40 percent of women agreed that "my pay is comparable to my colleagues' with similar qualifications and experience." Only 36 percent of white men, but 62 percent of women, agreed that "as compared with my colleagues, I work more but get paid less."

THE ROAD FORWARD

So, what can be done about these biases besides constantly reporting dismal statistics? We say use bias interrupters: changes to organizational systems that can interrupt the constant transmission of implicit bias. Stay tuned for forthcoming report, but here are a few:

- 1) Eliminate artificial penalties for women who take maternity leave.
- 2) Establish a low-risk forum to settle disputes over origination credit.
- 3) Establish clear rules and transparency around splitting origination credit.
- 4) Lawyers should not be able to pass clients onto other attorneys except through a formal succession planning process.
- 5) Firms should stop overvaluing the sales function and fairly share the profits among everyone who creates value for the firm and its clients.

Think "Ghostbusters" without the mayhem — but with same result.

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