



“Girls Just Wanna Have Fun(damental) Workplace Opportunities”: A Critical Discussion of Combatting Workplace Bias and Supporting Women in Career Advancement

Narrative

Summary:

Each year, nearly half of graduating law students are women. However, the number of women in partnership or managerial positions is grossly disproportionate to men. This trend is not just seen in the legal field. Women in managerial positions across professional industries, including the insurance industry, are more likely to be male-dominated. Though systemic trends are certainly in part to blame, there are less obvious reasons to consider, too. Current events make this a topic ripe for discussion. Politics aside, this roundtable will address gender bias, discrimination (express and perceived), and outdated workplace norms, and will hopefully leave attendees educated and motivated to further examine these issues in their own practices and work environments.

Target Audience:

Attorneys in partnership and/or managerial roles, or those who strive to take on those positions in their careers. Also claims professionals, specifically those in managerial and higher-level decision-making positions.

Presenters:

Mrs. Meghan Henry, Attorney, Morgan & Akins, PLLC

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Round-Table Discussion

I. Data Regarding Women in the Workplace (10 Minutes)

Even though it is 2018 and women have made significant professional and social advances, we are all very aware the glass ceiling has not been broken. In fact, the statistics are harrowing. While overall law school admissions are flat, the enrollment of women in law school continues to climb and has outnumbered men. But have these increased numbers lead to an advantage in the professions? The answer, to date, is no. And we are here to talk about why.

Even as more women add law degrees to their resumes, carving out a successful career at a law firm remains an uphill battle. While initiatives and conferences to expand the number of women who are equity partners at law firms are something of a cottage industry, progress for women is, at best, static.

The statistics are striking. For instance, women are 50.3 percent of current law school graduates, yet they make up just under 35 percent of lawyers at law firms. Most important, their share of equity partnership – where the highest compensations and leadership positions are lodged – remains 20 percent. The likelihood that women will become equity partners remains largely unchanged in last 10 years (16% in 2007 to 19% in 2017). In addition, when looking at 15 new equity partners, only about 5 (33%) are women. Despite being hired in nearly equal numbers as men at the associate level, women are the minority in both equity (19%) and non-equity partners (30%). Among equity partners, women work just as many hours but client billings are 92% less. Men continue to dominate the top earner spots with 97% of top earners being men. Women make up 25% of firm governance rolls, which is double growth in past decade. Another giant problem, diversity among women. White women represent 88 percent of women equity partners and nearly 17 of equity partners overall. In the aggregate, women of color (including black, Asian, Latina women) represent 12 percent of women equity partners and 2% overall equity partners. 97% of firms report their most highly compensated partner is a man. The top 10 earners of most firms are men, and no more than one of the rainmakers is female.

In addition to outlining these numbers for our audience, we will seek feedback regarding the breakdowns of audience members' respective firms.

II. Bias Discrimination (25 Minutes)

WHY are we seeing these numbers?

Headlines today are filled with blatant examples of workplace bias, from pay disparities in professional soccer, to supervisors' admonitions that women need to "get along with the boys" and, not to mention, the most recent outpouring of accounts detailing sexual harassment in the workplace. These are obvious, inflammatory, and offensive behaviors that deserve vigorous scrutiny. Yet attention to bias's blatant forms should not divert attention from its subtle ones. Indeed, studies have found that people are much more likely to encounter subtle forms of bias than overt ones. HR professionals no longer post signs reading "blacks need not apply," and managers rarely catcall their female subordinates (although recent headlines suggest otherwise). Instead, managers might ignore the input of a woman or praise the eloquence of a minority employee.

These latter behaviors often are unintentional and can reflect unconscious beliefs about characteristics of women and people of color.

Some might argue that the general evolution of discrimination from obvious to subtle may be evidence of social progress. Unfortunately, the new kinds of bias can be even worse than the older kinds. Subtle discrimination has not-so-subtle effects on employees and their performance at work.

One of these effects stems from the very human fact that we try to understand why people treat us the way they do. For example, if a young female associate is told by a senior partner that she will not be given a high exposure case because “women are not suited to handle that type of case,” it is relatively easy to identify the cause of the behavior: blatant bias. If the partner tells the female associate that he doesn’t believe she is ready for this kind of case, however, the reason is less clear. Is it because she is a woman? Or is the partner rightfully concerned with her inexperience, having the best interests of the associate at heart? What if he gives the same case to a male associate with similar experience? People will spend a lot more time ruminating and trying to figure out the latter situation than a clear-cut case of sexism. This rumination, the longer it continues, can be significantly depleting to cognitive and emotional resources.

Another reason subtle discrimination is stressful is because of its higher frequency as compared to overt instances of discrimination. Because targets may be confronted with these slights on a daily, even hourly, basis, the negative effects of subtle discrimination may build and accumulate at a rapid pace.

Finally, subtle discrimination is damaging because there is little or no legal recourse. This reality was highlighted back in 2015 when Ellen Pao, while not a lawyer, but a partner at a venture capitalist firm, lost a lawsuit against a former employer. In her testimony, Pao cited several instances of subtle gender bias at the firm, including being designated as the note taker during meetings, being disadvantaged as a result of her pregnancy, and feeling pressured to balance assertiveness with warmth because of her gender. After the five-week trial, a jury of six men and six women concluded that none of Pao’s claims had legal merit. It shows that only overt and intentional forms of bias (not subtle and unintentional ones) were associated with decisions favoring plaintiffs.

Even more troubling, in this time where we hear about blatant sexual harassment at work, you would expect that women should be helping women grow. But, they are not! A recent article in the Atlantic entitled “Why do Women Bully Each Other At Work” highlights the tendency of women bringing each other down. This article chronicles a young associate at a big law firm looking for a female mentor for guidance. Not only was she faced with few female partners to choose from, but those who were available did more to bring her down, than raise her up. In fact, the female partners were less likely to be understanding or receptive. This associate was faced with passive aggressive behavior wherein the female partners sang her praises to her face, but then enlisted a senior associate to later criticize her for working too slowly. She would note these female partners would work long and late hours with an attitude that if they gave up seeing their significant others, or kids, or friends, then this young associate should too. Ultimately, this associate left the firm and pursued a career at a smaller firm wherein she was respected. So what happened? This large firm lost great talent and a chance to foster a promising career and a bright female attorney. This is a prime example of how women should not be treating each other, we need to have each others’ back, not stab them. How can we change it?

III. Supporting Women and Changing the Norms

This part of the discussion is aimed at engaging the audience in describing various methods employed to challenge gender stereotypes and break the cycle of bias discrimination. We will also provide suggestions based on our own experiences and subsequent research.

The Dilemma of the “Young Female Associate”

Ask any female attorney and she will tell you that her job was particularly hard in her first five to ten years of practice, not only because of the rigorous demands of trying to earn her stripes as a new associate, but also because of the added stigma of being a “young female” associate. There are few things more frustrating to a new female attorney who made it through law school, attained her Juris Doctor, sat for and passed the bar exam, and secured a job at a law firm, than having a male tell her in a deposition, court room, or perhaps on a conference call that she “should pay attention and she might learn something,” or that she should “talk to her boss about what this means,” or use unwelcome terms of “greeting,” such as “hon” or “sweetie.” Frankly, men rarely, if ever, call out young male associates in a similar fashion.

And then what about the things that aren’t said directly to a young female attorney? There are countless conversations that occur over happy hour drinks to which said young female associate was not invited, regarding her appearance, her potential presentation to jurors, whether she’s a liability because she plans to have children, etc. The mere fact that these conversations are taking place add to implicit bias, and signal to other men that such sentiments are appropriate and acceptable.

The dilemma of the young female associate is multi-faceted: it’s overtly sexist, it’s insulting, it adds an unnecessary hurdle for young female attorneys to overcome, it feeds a stereotype about young, smart, talented women, and it perpetuates the cycle that feeds into the problem of bias discrimination.

How can men and women in leadership positions, including claims professionals, help end the era of this dilemma?

Shifting the Perspective

To really change the way women are brought up as industry leaders and to change the opportunities women are afforded, women must be seen as valuable members of any firm or company. Shifting the perspective away from women as “emotional,” “weak,” “family-oriented,” etc. to “hard-working,” “talented,” “widely respected in the industry,” “loyal,” etc. starts with “unlearning” what our society has long embraced as “feminine roles.” Firms and carriers must grasp this concept. Get to know the women in your firm. Try bringing a woman into a case she might not otherwise be drawn to. Take women on marketing trips, ask them to lead presentations like this one. Perhaps beginning with these steps will aid in normalizing the role women *should* fill in management positions.

Recruiting, Retaining, and Supporting Female Talent

Women provide work place value that increases profitability and overall culture. Women add diversity, different perspective, and varying approaches to problems that might otherwise be deemed “untenable.”

Law schools appear to do a good job of providing equal opportunities to men and women looking for internships and jobs after graduation. The bias begins in the actual hiring process, when some employers will overlook female attorneys of a certain age, for fear they will go on maternity leave within the first couple of years of joining the firm, affecting the firm’s bottom line. Similarly, women who have children at the time they graduate and are looking for a competitive bid face an immediate disadvantage, for larger firms in particular want a dedicated associate willing to bill through the roof at all hours of the day. The common perception is that mothers cannot fit that billet. Firms embodying this mentality are passing up smart, motivated, loyal workers. One theme we will come back to in this presentation is that of flexibility. Most firms have the technology to offer a remote-work option to its attorneys. This should be explored and used to accommodate both men and women who need to pick up their kids and put them to bed, but still want to get in a few hours of work.

Another common issue arises when a female associate takes a temporary maternity leave, only to return to find her case load diminished, a lack of work to bring her up to the hourly minimum, and an effective side-lining from the partnership track. This is patently unfair. Leaving work for several months to have a baby does not suddenly cause a woman to forget how to lawyer, lose clients, and lose her drive to succeed. Along the same lines, a woman desiring to come back at a reduced rate should be taken seriously. She is ramping back up, working with the firm, and should be supported in her efforts. Companies should reflect on their maternity policies, partnership requirements, and whether the combination of the two results in a disadvantage for female attorneys. This approach should not be limited to women leaving on maternity.

Be an Ally

Unfortunately, the numbers described earlier demonstrate how much influence men in leadership roles have over women in their pursuit of higher positions. Thus, it is extremely important that men act as allies to women striving to succeed in their respective roles. For example: A hiring partner collects a stack of resumes, sets up several interviews, but ultimately hires young, white men, time and again. He jokes that he’s trying to stack the firm softball team. At first, his colleagues laugh, but those in subordinate are scared to challenge him, even if his comments are intended in jest. This is an opportunity for firm management to step in and either challenge the hiring partner’s criteria, or simply replace him with someone who will abide by fair, inclusive criteria. This type of behavior, even if not intended to be serious, is a liability to any firm looking to succeed in an arena where carriers and clients are looking for more diverse representation.

Another example is in a firm lacking female leadership and/or mentors. Anecdotally, newer male attorneys will be mentored by the male leadership, leaving many women without a mentor or an ally to turn to. Males in leadership positions should not limit mentorship to young men. Even if it’s unintended, the lack of male to woman mentorship has undesirable consequences. It supports the antiquated idea that men should not mentor women because it can only lead to trouble, and it causes women in subordinate positions to view themselves as less than their male counterparts.

A final word about the issues presented in the *Atlantic* article cited above: This perception must stop. Women mentoring women is one of the most helpful, supportive ways to encourage women rising through the ranks. Having a strong female mentor is invaluable, and we recommend firms undertake programs or initiative fostering this idea.

Examples of Firms and Carriers Acting to Combat Bias Discrimination

This part of the presentation is the true heart of the round-table. We will encourage the audience to share their own experiences and how they may or may have not worked through those experiences. We are hopeful that the simple act of discussing bias discrimination and how men and women have stepped up to stop it will inspire audience members to shift any perspectives they may carry, and even influence others in their respective professional circles.