

# *Attrition, Bias, and Other Issues Adversely Impacting Women Attorneys in Law Firms*

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Women graduate from law schools and enter law firms at roughly equal rates as men. They consistently prove themselves to be exceptional attorneys, leaders, and team members. Yet, gender disparity and attrition persist. According to 2019 [NALP figures](#), women accounted for 47% of all associates, but just 24% of partners, 20% of equity partners, and 36% of total lawyers. These statistics are echoed by the [2018 Vault/MCCA report](#), which found that women hold a quarter or less of law firm management and leadership roles.

Some of the major issues negatively impacting the careers of women in law firms include:

- Attrition
- Bias and implicit bias
- Imbalances in "access to success"
- Compensation inequity
- Structural barriers regarding work-life balance
- Sexual harassment
- Lack of women colleagues, mentors, sponsor, and leaders

## **Attrition**

Attrition is a huge issue for women in law firms. This is very unfortunate for a host of reasons. Gifts are wasted; professional ambitions are unfilled; dreams are shattered. But when women--half the talent pool--prematurely leave law firms, there are additional consequences as well, impacting firms, clients, and the profession as a whole.

The issue of attrition of BigLaw senior women attorneys was the subject of a recent ABA study called [Walking Out the Door](#). The authors concluded that "A firm's relationship with the clients of departing women necessarily suffers...The attrition of experienced women lawyers leaves law firms without a critical mass of senior women who can participate in key leadership roles; creates a dearth of senior women to serve as first chairs at trial and leads on deals...deprives firms of much-needed gender diversity at senior levels, and deprives younger women lawyers of role models and sponsors."

## **Bias and implicit bias**

Bias and implicit (unconscious) bias continues to be a problem for female attorneys in law firms. Bias and implicit bias involves people holding negative stereotypes about a particular group of attorneys, such as women, which can adversely impact the way those people are treated. Bias breeds mistrust, misjudgment, and resentment. It can also result in women receiving less sophisticated work assignments, unfairly critical work reviews, and reduced advancement and compensation opportunities.

Bias was the subject of an important recent survey by the MCCA and the ABA's Commission on Women in the Legal Profession. The survey was completed by over 2,500 attorneys and assessed how bias actually plays out in women's daily professional lives and other diverse attorneys in law firms and in-house legal departments. The findings are set out in [You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession](#). Women reported bias in getting hired, getting mentored, getting paid fairly, and other key workplace processes.

Women reported experiencing **four types of bias**:

**Prove-it-Again Bias** - Prove-it-Again Bias occurs when an attorney is made to feel as if she needs to go "above and beyond" to get the same level of recognition and respect as a male attorney. This type of bias includes female attorneys being mistaken for administrative staff, court personnel, or janitorial staff. Women of color attorneys experience the highest levels of this type of prove-it-again bias.

**Tightrope Bias** - Tightrope Bias occurs when an attorney is made to feel as if she needs to act in feminine ways to be accepted or if she experiences backlash for acting in "masculine" ways. Tightrope bias includes being saddled with administrative tasks, like notetaking, that are not helpful for career advancement.

**Maternal Wall Bias** - Maternal Wall Bias occurs when a female attorney is treated poorly after having children, including being passed over for promotion, assigned low-quality work, demoted, paid less, being unfairly disadvantaged for working part-time or having her commitment or competence questioned.

**Tug-of-War Bias** - Tug-of-War Bias occurs when conflict arises between women that may result from bias in the environment.

## Imbalances in "access to success"

Law firms are not level playing fields in which people rise or fall solely on their own merits. An attorney's ability to succeed within a law firm is influenced by that attorney's intelligence and industriousness. Her success can also be affected by non-merit-based factors, including whether and the extent to which that attorney can benefit from formal and informal structures, networks, processes, and perceptions that can make or break a career.

The authors of the [Walking Out the Door](#) study refer to these factors as "access to success." The elements of these factors "speak to how women generally are perceived and what opportunities they are given to climb up the ladder within their firm." A significant cause of law firm gender disparity and attrition may be that men and women who are equal in terms of individual merits are not equal in terms of "access to success" factors within their firms.

The survey asked male and female NLJ 500 firm attorneys with at least 15 years of practice a number of questions regarding access to success. The study revealed striking differences in the experience of men versus women in significant respects. The study found that:

67% of women versus 10% of men reported experiencing a lack of access to business development opportunities;  
63% of women versus 2% of men reported being perceived as less committed to her/his career;  
53% of women versus 7% of men reported having been denied or overlooked for advancement or promotion;  
54% of women versus 4% of men reported having been denied a salary increase or bonus; and  
46% of women versus 3% of men reported experiencing a lack of sponsors.

Women and men have vastly disproportionate experiences in law firms regarding access to success, and gender disparity and attrition will persist while these imbalances exist.

## Compensation Inequity

Compensation inequity is another problematic area for women attorneys in law firms. The [NAWL 2019 Survey Report on the Promotion and Retention of Women in Law Firms](#) found that men are paid more per year than women for AmLaw firms across all levels. The survey also revealed that 93% of firms reported that their most highly compensated attorney was a man. Most firms reported having no women among the top 10 most highly compensated attorneys.

What leads to gender pay inequity in law firms? Some attribute compensation inequity to secretive "black

box" compensation structures and male-dominated cultures that devalue female attorneys' contributions. This is what the plaintiffs allege in the highly publicized class-action gender discrimination lawsuit currently pending against Jones Day. Other observers have postulated that compensation differences may result from women gravitating to practice areas like labor and employment law that can be less highly valued than other practice areas. This leads to the question of whether law firms are adequately valuing some practice areas and whether certain junior attorneys are tracked into specific practice areas that have consequences down the line.

Even the "billable hour" and how it is traditionally calculated may play a role in perpetuating gender compensation inequity in law firms. Please see [Can Rethinking the Billable Hour Lead to More Law Firm Gender Equality](#), which discusses how conventional methods of calculating the billable hour can impact the pay gap.

## Structural barriers regarding work-life balance

Women attorneys working in law firms also face structural barriers regarding work-life balance. Despite shifts in society towards equalization, the majority of women continue to disproportionately shoulder childcare responsibilities in our society. Consequently, female attorneys are professionally disadvantaged to the extent that law firms are unable or unwilling to accommodate that reality in a meaningful way. Caretaking responsibilities remain a major reason why women leave law firms at greater rates than men.

Indeed, in the [Walking Out the Door](#) study on attrition of women attorneys from law firms, there was relatively equal agreement among women, men, and responding partner responses regarding caretaking commitments as a reason that women leave law firms. In the survey, 60% of women, 56% of men, and 44% of responding partners responded that caretaking commitments were why women leave law firms. Women reported a disproportionate share of caretaking responsibility, and caretaking was one of the main reasons women left law firms.

Many firms have tried to address these issues by implementing policies and procedures like flexible work arrangements, childcare assistance, and onboarding programs for women returning to work after taking time off for family reasons. But even when those options exist in theory, they are not always accepted or encouraged as part of firm culture. Thus, they are not as effective as they could be. According to the [ABA's 2019 A Current Glance at Women in the Law](#), 50% of women agreed that taking family leave would negatively impact their careers. Morrison & Forester recently settled a class-action gender discrimination lawsuit by female attorneys who alleged that their careers were damaged after taking advantage of the firm's "mommy track" policies.

According to a [survey by McKinsey & Company](#), "women lawyers bear a disproportionate brunt of responsibility for arranging for care, leaving work when needed by the child, children's extracurricular activities, and evening and daytime childcare. Any one of these factors affects the time and effort expected for a successful law practice, and the combination competes even more for a lawyer's time."

## Sexual harassment

Another issue disproportionately impacting women is sexual harassment. The [You Can't Change What You Can't See](#) MCCA/ABA survey found that approximately:

One-quarter of women reported some form of sexual harassment at work, such as unwanted sexual comments, physical contact, and romantic advances; and

One in eight women reported that they lost professional opportunities because they rejected sexual advances in the workplace.

These results were reinforced by the Walking Out the Door study, where half of all women reported experiencing unwanted sexual contact at work, and 16% of women versus 1% of men said that they lost work opportunities because of rebuffing sexual advances.

### **Lack of women mentors, sponsors, and leaders**

When it comes to helping increase diversity and inclusion, numbers matter. The more significant number of women practicing at all levels in a law firm, the more diverse and inclusive it will become. This is especially true when it comes to having a higher number of women in positions of importance and leadership to help support younger female attorneys as both mentors and sponsors. It is also beneficial for women to hold key leadership roles to influence the vital partnership, compensation, and other decisions in ways that value women. Female attorneys need other female attorneys to look up to and stand up for them when it comes to the kind of critical decisions that can make or break a career.

### **Conclusions**

Attrition and other problems like bias, access to success imbalances, compensation inequality, and sexual harassment continue to impede women attorneys' careers in law firms. The profession has made strides in combatting these problems. Indeed, the fact that we are identifying and assessing these problems means that we are on the right path. But we can and must do more to get every attorney on an equal footing and track to success.