



NAWL Pay Equity Connection: Sources of the "Pay Gap"

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In July 2019, the U.S. Women's National Soccer Team made international headlines on and off the playing field. Their on-field dominance secured the 2019 World Cup victory, but their off-field fight for pay equal to that of their male counterparts is a battle that continues to rage on. The Team's demand for equal pay is neither unique to the sport nor unique to the times. In nearly every profession, the "pay gap" that exists between men and women is well documented. The legal profession is no exception. To close the gap between women's and men's compensation, it is important to understand that the origins of the problem may arise from one or multiple causes and so will necessitate working through issues one by one.

Firms and organizations should consider how many of the pay gap causes listed below exist within their organizations and consider implementing comprehensive policies with adequate checks and balances to mitigate and eliminate the sources of these often unconscious or

unintentional problems. The fact that these problems continue to permeate many organizations is the number one reason that women in North America earn about 77% of every dollar earned by their male counterparts.

The emerging era of the #MeToo movement adds greater complexity to these issues, as there is now further concern that men will be more reluctant to mentor, sponsor, or even work closely with women due to a fear that these interactions may have negative ramifications. Most leaders in law are men, and it is crucial for mentees to be champions for and mentors to women for them to grow within an organization and for the pay gap to be eliminated.

This article is a list of high-level issues highlighting factors contributing to the pay gap, including resources and literature that will aid in obtaining a better understanding and appreciation of the complexity of the issues that cause the pay gap between men and women. When

you are reading through the list, consider the real-life examples that help to clarify how these issues manifest in everyday/commonplace scenarios. We hope that that the list illustrates that it is not effective merely to track the pay gap and push for parity without addressing the pay gap's root causes

Mentorship/ Opportunity Gap/ Networks

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13

Key Points

Informal/formal relationships lead to career opportunities and play a key role in advancement and compensation decisions. Mentoring relationships and champions are fundamental to advancing one's career opportunities, providing good/stretch work, recommendations, and career advice.

The opportunity gap exists as a result of the number of men in management/high profile positions as compared to women. Studies show that people generally prefer to work with individuals who remind them of themselves, and feel more comfortable with, obligated, and loyal to those individuals. As a result, they view similar individuals more positively and trust them more than others and are thus more likely to champion them.

When women have less access to the informal network structures upon which people rely to advance themselves and their friends, the result is continued inequity. Even when women hold jobs of comparable influence and status, studies have shown that women receive less instrumental help from their networks than men.

These reduced opportunities mean not only less client visibility but also less ability to originate clients, distribute work, or be involved in leadership development opportunities. It also makes it more difficult for women to find sponsors to advocate for them in the partnership elevation process.

Real-Life Examples

Sally does not have the same extracurricular interests as her colleague Kyle, an associate with the same level of experience as Sally. Because Mike is a former varsity hockey player and alumnus of an all-boys school, Kyle reminds Mike, a senior partner, of himself. As a result, Mike takes a special interest in Kyle's career, ensures he receives experience-building assignments, and sings his praises at associate review meetings. Because there are far fewer senior women at Sally's firm, she doesn't get the same level or quality of mentoring. This directly impacts her chances for growth and success.

Males Dominate Management Positions

1, 2, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22

Key Points

Studies show that men dominate managerial positions and, as a result, may not realize or understand how their business decisions can have a negative impact on women. Women are overwhelmingly underrepresented in decision-making positions.

Studies show that about 75% of management committees are made up of men, who often leave it to women to identify issues that impact women. Due to the lack of female representation in management, women's issues are not often discussed or even identified. It is hard to effect change for the betterment of women if women do not have a seat at the power table.

Moreover, studies show that women who promote issues of diversity are often harmed by doing so, whereas men are given a career boost for promoting issues of diversity. This can act as a deterrent for the few women who are on management committees. These women risk impeding their own career progression by identifying issues that negatively impact women, which perpetuates the cycle of disparity even when women are given seats at the power table.

Real-Life Examples

Ann is a very talented lawyer, but she is shy and not particularly well known at the firm. Her two mentors, Samaneh and Marie, recognize her talents and her significant contributions to their files, but since they are not on the partnership committee, Ann does not get the recognition she deserves and is overlooked for promotions and pay increases.

Ella is the firm's first reduced-hours income partner. She is scheduled to work Mondays through Thursdays. The male managing partner schedules the recurring partner meetings on the first Friday of every month, causing Ella to risk being left out of the partnership meetings unless she breaks her agreed-upon schedule.

Assignments/ Origination from Networking

3, 7, 23, 24, 25, 26, 27, 28, 29

3

Key Points

Male lawyers reportedly receive significantly more internal firm referrals for new work and have a higher percentage of origination from internal referrals. As a result, women tend to work on matters that are less high-profile and are even stereotyped into certain areas of the law with a perceived lower level of prestige. If women are not getting as many file opportunities, and the opportunities they do get are not on the high-profile files, they do not have the same level of reputation leverage within the firm as their male counterparts. This directly impacts the arguments that can be made in favor of their compensation.

Compensation decisions and reviews are based on work done throughout the year, so when women do not have access to the top-level cases, clients, and assignments from the outset, they have a reduced basis on which to challenge pay inequity at the end of the year.

Firm partners and committees must monitor the types of assignments provided to associates in order to ensure equal opportunity for all associates to deliver outstanding results on impactful matters.

Real-Life Examples

Brandon, a third-year associate, and Peter, a senior partner with control over the firm's most significant client, share a love of college basketball and spend many a March afternoon at the nearby pub watching these games. During a particularly exciting finish, Peter suggests that while he typically doesn't trust his client's key depositions to an associate, he appreciates Brandon's enthusiasm and brings him into a high-profile case that is about to enter into the heavy deposition phase. After Brandon performs well, Peter starts referring to Brandon as "my guy" and allows him to handle work that a junior partner would typically handle. At the end of the year, Brandon gets recognition both in his review and in his bonus compensation for doing work well beyond his years of experience for Peter's largest client. Meanwhile, Jill, who spent all of her March afternoons reviewing documents with a team of third-year associates instead of at a pub, gets a perfectly adequate review for ably managing the work she was given. Brandon is placed on the fast track after being viewed as a superstar and continues to receive requests from other partners to take depositions due to his level of experience. Tina is not similarly recognized nor offered comparable opportunities.

Origination Credit

1, 2, 3, 5, 23, 33, 34, 35, 36, 37

5

Key Points

Disparity in origination credit is identified as the primary reason for pay gaps among partners. Studies show that client origination and credit for bringing a client in (sometimes referred to as "rainmaking") plays a significant role in dictating a lawyer's compensation, and directly impacts a lawyer's earning power.

The lack of origination stems from many issues, some of which include:

- Old boys' clubs (keeping work within the "in-group" members) perpetuate the origination sharing networks within their in-groups through in-group socialization, often excluding women and attorneys of color from succession or origination-sharing opportunities.

- Old boys' clubs also impact the assignments systems, which provide fewer opportunities for women to get exposure to high-level matters and direct access to institutional clients because men often prefer to work with those whom they get to know outside of the office and/or those with whom they can identify.

Studies have confirmed that these issues directly impact the opportunity for originating a client and obtaining credit. Moreover, even if a female lawyer does bring in a new client/matter, women receive less credit for work accomplishments (or a job well done/instrumental role played) related to the matter.

Women also report that when disputes arise regarding client origination, male partners sometimes threaten, bully, or try to intimidate them into backing down and walking away—further perpetuating the problem.

Real-Life Examples

Helen is not invited to the many male-oriented client events with her male colleagues, such as the firm's golf day. Mark, a lawyer who has the same amount of experience and graduated from law school the same year as Helen, gets twice as much exposure to the clients and senior male partners because of the social opportunities coupled with the number of senior male lawyers at his firm. As such, Helen does not get the same opportunities to meet clients or deepen client relationships. Mark is given a share of the origination credit for matters referred to the firm by the golfing clients due to his exposure to those clients in social settings.

Slow Progress of Women (as a group) Attaining the Rank of Equity Partner

1, 2, 30, 31, 32

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Key Points

A review of the numbers shows that women are always underrepresented at the equity partner level, and even for those who have achieved such promotions, the progression to advance up the partnership ladder is generally much slower for women as compared to men.

Witnessing the underrepresentation and the slower path to partnership for women as compared to men can create the internalization of a "stereotype threat" in female attorneys. The stereotype threat implicitly creates feelings of doubt both individually and generally in a female attorney in her ability to achieve equity partnership status. This internalization increases the likelihood that a female attorney will not choose a path to partnership for fear that she will never get there, even if equity partnership is what she desires, and the cycle continues.

Men are promoted to equity partner based on potential to originate business, and women are assumed to not be able to replicate early business development successes. Also, women are often perceived to be less committed to their careers as a result of child-rearing or the potential to have children. As such, this further divides the tracks to equity partnership for men and women.

Real-Life Examples

Mary is a "Big Law" senior associate at a great law firm. Among the 100 equity partners in the firm, there are only 9 females. As a result, Mary has fewer female champions and mentors to help promote and mentor her. Because she is competing with her male counterparts who have great support from the male equity partners, she decides to go in-house, as the prospect of making equity partner is very slim. This further perpetuates the lack of female presence in equity partnerships.

Lack of Diversity on Compensation Committees

2, 38, 39, 40, 41

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Key Points

A review of the numbers shows that Studies show that a more diverse compensation committee will positively impact compensation for minorities. As such, it benefits women and other minorities (including men who are minorities) if the compensation committee that is making pay decisions is diverse. Moreover, studies show that to have a real impact on this pay decision-making in corporate settings, 40% female participation is ideal. However, on average, compensation committees have less than 20% combined female and other minority participation.

Real-Life Examples

Jane was an integral part of a case team and, after three years of intense litigation, she achieved a significant settlement on a contingency matter. The firm's share of the settlement was five times the value of hours put into the case. The male members of the team touted their individual performance in their self-evaluations, and Jane touted the team's victory. The male members of the team received a discretionary bump in their compensation, but Jane did not. No one on the all-male compensation committee noticed or noted the discrepancy.

Succession favoritism

1, 2, 3, 24, 31, 42, 43, 44

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Key Points

When a partners retire or leave the firm, most law firms allow those partners to unilaterally bequeath their clients' matters to any attorney(ies) of their choosing. Given the previously mentioned relationships and networks and the concentration of men in power positions, these hand-picked successors are predominately male. This is the case even when a female lawyer may be a better fit for a particular client. The exclusion of women from the internal networks that enable male colleagues to assist each other's client development and retention efforts is a significant source of the pay gap.

Real-Life Examples

For the majority of her career Kathy has worked on developing strong working relationships with one of the firm's key institutional clients, only to learn when the relationship partner leaves that he has bequeathed the client's matters to a male income partner, Max, who has not devoted the same time to this client, in order to ensure that the client continues to work with the firm. Max is made equity partner, whereas Kathy is asked to leave since she does not have clients of her own.

Lack of opportunities to participate in client pitches

1, 2, 3, 24, 31, 42, 43, 44

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Key Points

Many firms do not provide women with equal opportunities to participate in client pitches, which prevents them from receiving origination credit and limits their potential for advancement altogether. Moreover, even when women are invited to participate in pitches, they report that despite their participation, they still do not receive a proportionate share of the origination credit.

A major reason for this is that women are often brought to pitch meetings for the purpose of portraying to the potential client that a firm is diverse, but these women (from the team/firm's perspective) are not seen to be a "true" member of the team. This issue is known as "tokenism" - women are invited to the table simply to be female representatives, not to meaningfully engage in the business acquisition process.

Real-Life Examples

John has had his eye on reeling in ABC Corp's business for years. He sees that there is a new regulation working its way through the FCC that will dramatically impact ABC Corp's ability to compete in the market. He calls Susan, a former FCC attorney, and asks her to join him for a pitch. She agrees and convinces ABC Corp that it could benefit from her years of experience on the inside, and as a result, ABC Corp sends its work to the firm. When the origination report comes around, Susan is quite surprised to learn that John has taken full credit for the ABC Corp matter. When Susan raises the issue with him, John claims that his years of work trying to bring ABC Corp into the firm finally paid off, and Susan is overreaching in her request for a share. John is on the compensation committee and has the power to make Susan's life very difficult, so she drops the matter.

Lack of Transparency (other partners'/ associates' salaries)

1, 2

9

Key Points

Without the ability to see what all members of the firm are earning, especially male counterparts, women lose key information and powerful bargaining power to ensure that they are earning a fair salary and/or bonuses.

Real-Life Examples

Lily worked for decades without knowing that she was paid significantly less for doing the same job as her male colleagues because her firm lacked transparency in its salary and bonus structure. There were no members on the compensation committee specifically paying attention to gender pay equity issues and as such, pay inequities were unintentionally cultivated. Each year, the pay gap grew because Lily's "current salary," which served as the basis for determining her next compensation level, was lower than that of her male peers. If the compensation system had been transparent, she would have been able to identify the inequity before it compounded.

Hesitance to negotiate/fear of negative gender stereotyping

1, 2, 5, 24, 46, 47, 48, 49, 50, 51, 52

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Key Points

Many female lawyers are uncomfortable negotiating their own compensation. As a result, women lawyers are reluctant to advocate or express their views to the firm, which often leads firm leadership to believe that women are satisfied with their compensation. Women are often reluctant to negotiate compensation due to fear of backlash from gender stereotypes that do not create the same barriers for their male counterparts. Women who behave confidently or assertively in the workplace tend to trigger strongly negative evaluations from their colleagues and tend to be less popular than men who behave the same way. As a result, fearful of gaining a reputation as "difficult" or being labeled "selfish," women forego advocating for themselves at all.

Additionally, women tend to avoid showing emotions/negative feelings for fear of being criticized/stereotyped.

Real-Life Examples

After a lifetime of being conditioned to be a team player and to be thankful for what she was given, Rachel works up her courage to ask for a salary bump. She comes to her review meeting with market data and a list of her accomplishments over the past few years that place her in a different compensation category from the one she is currently in. Her reviewer is taken aback by her assertiveness and is offended by her implication that she is being undervalued, and from that point on she is internally labeled as a troublemaker. As a result, she has difficulty getting quality assignments from the partners that used to rely on her expertise.

Pregnancy/ Primary caregiver status seen as a disadvantage. Also, reduced hours/family commitments are a barrier to promotion

2, 53, 54, 55, 56, 57, 58, 59

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Key Points

Women are often viewed as, and frequently take on the role of, primary caregivers for children and/or elderly parents. This leads to some women taking on a reduced-hours schedule, which has been identified as a barrier to promotion. Male partners may also decide to not staff pregnant women or women with children on their matters because men perceive that such women will have less time to dedicate to the matters or will ultimately be leaving the practice as a result of their family choices. Further, many male partners deem that there is little reason to invest in mentoring these women, assuming that they will ultimately leave the profession.

This stigma exists even if women do not have children. Simply being of childbearing age puts women at a disadvantage versus their male peers if their male superiors assume that because females are capable of having children, they will be less committed to the firm and contribute less value than their male counterparts contribute.

Real-Life Examples

April is a single mother of two toddlers who has reduced her hours. As a result, some members of her firm believe she can't handle the bigger matters at work. She does have a fantastic nanny who is willing to work flexible hours as well as overnight and weekends. However, when it comes time to staff an exciting new case that has just come into the firm, April is overlooked based on the assumption that she would not be open to the travel required to cover depositions across the country and attend the trial. George gets the prime assignment and is put on the fast track for partnership.

Lack of “Two-Person Career” benefiting working women

2, 54, 55, 56, 57, 58, 59, 60

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Key Points

The “most-hours-wins” system that is common in law firms generally disadvantages women because it relies on having a partner at home who can help manage the household while the other person has long hours or inflexible working schedules. This is known as the “two-person career” model, which traditionally has benefitted the men who are working outside the home.

A two-person career is understood to be one that requires the support and involvement of both partners. While only one spouse is actually employed, it is assumed that the other will also be substantially involved, often in aspects of planning, preparing, and supporting the efforts of the other in his (or her) career. Traditionally, two-person careers have involved an employed husband.

This setup allows the career spouse to spend more time at work and increase his billable hours. Because of the traditional division of labor in a family, women attorneys seldom experience the benefits of the two-person career model. Furthermore, women often take on the burden of home/family/elder responsibilities, which further hurts their ability to attend to work commitments with conflicting home/family demands.

Real-Life Examples

Jack is managing a cross-practice team to get a large long-term deal done and sets a weekly “all-hands” meeting on Thursday at 7pm. Tamera had signed up to coach her son’s soccer team on Thursdays. Her typical schedule involves rushing to leave the office by 6:15 p.m., running to the field to be the first one to practice, and getting home for a quick bite, goodnight, and back to the computer by 8:45 p.m. Losing those precious few moments of the evening with her son for a meeting that could have easily been scheduled during typical working hours makes her rethink the sacrifices she is willing to make for the job.

Marriage’s negative impact (perception)

2, 53, 54, 55, 56, 57, 58, 59

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Key Points

Studies have revealed that employed husbands whose wives do not work outside the home or who work part-time are more likely to:

- Have an unfavorable view about the presence of women in the workplace;
- Perceive their workplace as running less smoothly if there are higher percentages of women;
- Find workplaces that have female leaders as less desirable places to work; and
- Evaluate female candidates for promotion as less qualified than comparable male colleagues.

All of these perceptions have a direct negative link to pay equity.

Real-Life Examples

Tina has been the breadwinner in her family since she graduated from law school, but Bill, whose wife never worked, constantly makes snide comments about all of Tina’s parental failures – missing the PTA coffee, failing to sign up as a room parent, and “outsourcing parenting responsibilities.”

Women have a higher number of non-billable hours

1, 3, 30, 33

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Key Points

The typical female equity partner bills only 78% of what a typical male equity partner bills. When asked to report total client billable and non-billable hours, however, the total hours for women equity partners exceeded the total hours for men equity partners. The median hours reported for the women were 2,224, while men reported 2,198. The data raise questions about whether committee assignments, hourly billing rates, and the distribution of pro bono hours contribute to disparities in client billings.

These non-billable hours often bring value to the firm, but without advocates on the compensation committee to recognize the value these activities bring to the firm and include that value in calculating compensation, women are likely to see decreased compensation numbers compared to their male counterparts.

All firm committees need diverse perspectives to maximize their effectiveness, but given many firms’ inability to recruit and retain women that will progress to the senior levels, the pool of women available to participate is smaller. Therefore, fewer women carry the burden of this type of work for the firm without being compensated for the impact that work has on billable hours.

Real-Life Examples

Kate uses participation on committees as a networking opportunity (given that she’s not usually invited to watch a sports event with her male colleagues). Kate also knows that helping the firm plan large-scale charity events enhances the firm’s goodwill and reputation, so she is happy to help. On most of the committees Kate sits on, she is given administrative roles such as taking notes and organizing logistics. These tasks are time-consuming and eat into the time Kate spends on getting more billable work. Although her contributions are critical to the committees’ work, they are less visible and, therefore, she does not get much credit. She certainly does not receive any additional compensation for her time organizing committee work.

Bias in the review system

39, 64, 65, 66, 67, 68, 69, 70

15

Key Points

Studies show that women are more harshly evaluated than men, especially when it comes to demeanor. Negative feedback with respect to interpersonal communication negatively impacts the current year’s compensation.

Studies also show that men receive more constructive criticism, whereas women do not receive feedback that encourages growth. Constructive feedback pays off for men in future years for having met goals set in prior evaluations.

Real-Life Examples

Libby is smart, highly organized, and a stickler for deadlines. As a result, she keeps clients happy with the work product and quick turn-around times. Jeff is very similar to Libby in demeanor and in his expectations for those working with him on a team. When it comes time for associate evaluations, Libby is described as bossy and arrogant, while Jeff is perceived as a confident and competent leader for the same behaviors and characteristics. This perception gets passed around the firm, and as a result, fewer people desire working with Libby than with Jeff.

Lone Wolf Mentality

71, 72

Key Points

One spoken or unspoken concern of those who oppose team business development efforts is that they will be forced to split their “piece of the pie.” To the contrary, research has shown that team business development increases the size of the pie such that individual shares can be unaffected.

As a result of the “lone wolf mentality” that is prevalent in many firms today, women, who are already at a disadvantage when it comes to collaborative business development because of their gender, are given even fewer opportunities to participate in business development with other team members. This further prevents women from receiving business development guidance, mentorship, and training from their superiors, regardless of whether those superiors are male or female.

Real-Life Examples

Luke has been a fantastic mentor to Janelle throughout her years as an associate and played an integral role in her elevation to partnership. However, when it came time to mentor her in business development skills, Luke went radio silent, instead he focused more on mentoring and championing for another associate, Billy, who plays with Luke on his hockey team. Luke often invites Billy to client pitches instead of inviting Janelle. Even though the firm adopts a “lone wolf” model with providing origination credit, Janelle does not get the same opportunities to interact with clients in the same way as Billy, leaving her at a disadvantage.

Women are Altruistic

73

Key Points

When it comes to origination credit-sharing, women tend to be more altruistic than their male counterparts in splitting origination credit with other partners.

Real-Life Examples

Kelley practices in Dallas, Texas, but recently brought in a client who is headquartered in Phoenix, Arizona. Kelley associated local counsel in Phoenix to work on the matter. Kelley wanted local counsel to take ownership in achieving a favorable result and creating a sense of trust in the client, so she shared origination credit with the local counsel. Matthew practices in Atlanta, Georgia, but recently secured a client based in Tulsa, Oklahoma. Matthew associated a Tulsa attorney to serve as local counsel, but did not share the origination credit because it was his original relationship that procured the client.

Discrepancy in Billing Rates

74

Key Points

Studies have shown that:

- (1) Women are billed out at lower rates than male attorneys; and
- (2) Women’s work is discounted more often than that of male attorneys.

This is the case even though, as the Sky Analytics White Paper Gender Study revealed, there is no difference between the number of hours the two sexes bill to complete a task or the number of hours they bill per day.

The study also teaches us that the difference between men and women’s billing rates – the gap in the rates at which women are billed as compared to men – increases with their seniority. The more senior a woman lawyer gets, the lower her rate will be relative to her male counterpart with the same years of experience, regardless of whether either has taken a leave.

Real-Life Examples

June has been practicing law for 25 years. Her billing rate is \$125 less per hour than James, who also has 25 years of experience. This billing discrepancy started off as a \$10 per hour difference 15 years ago but has grown consistently over the years. June has three institutional clients that have been with the firm for 20 years and threatened to pull their business if June increased her rate as much as James was increasing his rate. The firm agreed with June that the value of keeping her clients coming back with more work over the years was worth the slower rate of increase. Meanwhile, James’ clients have continued to pay his ever-increasing rates for single matters.

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