



Lowenstein Sandler's Women's Initiative Network Podcast: Real Talk

Episode 18 - Women Lawyers' Advancement and Compensation: How Far Have We Really Come? Part II

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Amanda Cipriano: Welcome to the Lowenstein Sandler Podcast Series: The Women's Initiative Network, Real Talk. I'm Amanda Cipriano, an associate attorney and member of the Women's Initiative Network at Lowenstein Sandler. Before we begin, please take a moment to subscribe to our podcast series at [lowenstein.com/podcasts](https://www.lowenstein.com/podcasts), or find us on iTunes, Spotify, Pandora, Google Podcasts, and SoundCloud. Now let's take a listen.

Rachel Dikovics: Welcome back to part two of our discussion about Rutgers Center for Women and Works study, Women in Private Law Firms Slow Progress on Equality of Promotion and Compensation. We're again, joined by guests Kirsten Branigan and Debra Lancaster, both of whom worked really hard on this report. Let's jump back in.

I want to circle back to something that Debra said earlier about, women are in law firms, we see a lot of women, but where do we not see them?

The study identified some of those things too. For example, only 19% of firm-wide managing partners are women. Only 28% of office-managing partners are women. Governance committees are only 28% women. Perhaps most important of all, comp committees are only 29% women and practice group leaders are only 25% women.

While we do see women in a lot of the roles that Debra and Kirsten talked about, we're still not seeing an equal number of women in these upper echelon leadership roles in law firms.

With those figures in mind, did the study find that there is still a significant earnings gap between male and female attorneys?

Debra Lancaster: With the exception of attorneys in the public sector, where things are a little bit more equal, and that makes sense for all kinds of other reasons, gender discrepancies and pay remain and are really institutionalized in the legal profession, even among partners.

For example, male equity partners surveyed by the American Bar Association earned 27% more than women equity partners.

Another study clearly shows that male partners make on average 53% more than women partners at the largest law firms. The largest law firms are particularly, that's where we see some of the starkest gaps.

But I thought what was really interesting is that, the pay gaps begin quite early on in careers within a law firm. Research that followed a cohort of 5,000 lawyers found that after only two to three years of practice, women and men had a 5% gap in income.

Fairly early on, when you're still an associate, that gap begins to emerge. That is something that seems to be persistent and ever present within law.

Megan Monson: Overall, it sounds like a lot of bad news, in terms of women advancement and coming out of the study. Did the study identify any strategies to work, to combat these inequalities?

Kirsten Branigan: All right, so despite the fact that it sounds like a lot of bad news, there are some actually really good strategies that the report focuses on, and they group them into about four different buckets.

The first is removing bias. The second is assisting with work-life balance and flexibility. The third is monitoring advancement. The fourth is developing resources.

I can break those down and talk a little bit more about those, but they are all very multi-layered. I know that we could talk for a long, long time about each of them. But just in a nutshell, the removal of bias, this encompassed both explicit bias and implicit bias.

There still is a lot of instances of blatant gender discrimination at law firms, and there are situations where it's more implicit.

There's a lot of assumptions that get made. There's assumptions about when women are pregnant. There's assumptions about a lot of things that factor in gender, in a way where it might not be a blatant discriminatory action, but based on more unconscious bias.

That's where training and education really becomes critical in law firms, whether it's something on just the basic tenets of harassment, discrimination prevention and also, implicit bias understanding and cultural awareness.

Generational differences is a huge area that law firms need to tackle these days. Oftentimes, you've got older attorneys of a certain generation, interacting and communicating in ways different than a younger generation. A lot of areas in the space of bias, that really needs to be worked on in a meaningful way.

Then there's policies. I know that one of the things Rachel mentioned was about going out on maternity leave. Yes, it is true that many of those 50% of the associates are going to utilize maternity leave.

The fact that many of the men don't utilize the paternity leave is something that's a problem as well, because there's still a lot of stigma involved in that. That's an area that firms can really just simply have a parental leave policy, and have it expected that either parent is going to utilize it.

It's not when somebody is hired and is pregnant, the first thing the partner thinks about is, "Oh gosh, she's going to go out on maternity leave right after we hire her."

Won't be all attributable to one gender. It would be a matter of, "Yes, young people, at some point, will procreate and one or both of them may want to take leaves or need to take leaves."

This is something that we in the law profession should embrace and allow, but that doesn't happen quite as frequently. There's still a lot of men. You need to have somebody at a high level within the firm, set that standard.

It has to come from the top. You have to see successful male lawyers take paternity leave, for everybody else to look around and say, "If he did it, then I guess it's okay for us to do it."

You change your culture. That's something that law firms can easily do and work on, to create more of an environment where people are not worried and certainly, have other policies surrounding paid leave.

I think the report did note this, that law firms do have paid family leave, in a way that has improved over the years, but there's still more room for improvement there, as well as, at a broader level, having laws that really value and protect against maternity leave, family and medical leave, all the types of leaves that individuals need in their lives for caregiving reasons, and not suffer repercussions.

We don't, in this country, have the best family leave laws. Other countries have significantly better protections and understand that there are times in people's lives that they may need these accommodations. Unfortunately, in our country, and this is not just in the law, but in general, we don't have very strong laws with respect to that.

There's also, with respect to the second category, work-life balance, having flexibility is something that women lawyers have been fighting for, for a very long time, especially those that have any caregiving responsibilities. The pandemic has provided us with a glimpse into how this can actually be done quite effectively within the legal profession, as many women and men have worked virtually for over a year in law firms and still were able to be successful.

That kind of flexibility is just so critical. That's something that firms can work on having policies and work on providing that level of flexibility.

I think that the generations that are working within the legal profession now are really going to push that, because I don't think anybody really is going to go back to, wanting to be 100% in the office.

The law has always traditionally, been a very face time required profession. Now, many people in the legal profession want the benefit of having, at least, a hybrid option, to be able to work somewhat remotely, so that they can balance their family responsibilities, still be attentive to their clients and do what they need to do. Those are all very important.

Also, from the standpoint of mindfulness and wellbeing, this is a topic that really needs to be talked about more within the legal profession. I happen to also serve on the board of trustees for the New Jersey Lawyer Assistance Program, where we focus on both substance use and mental health challenges within the legal profession.

Lawyers are in a unique profession, in which they are constantly absorbing other people's problems and becoming saddled with other people's problems and don't address their own issues and problems. That oftentimes leads to mental health challenges and substance use. We need to talk about that more in the legal profession.

One of the reasons why lawyers suffer a lot of these mental health challenges or resort to substance use is because of the construct of the billable hour, and whether or not the billable hour is really a good thing for mental health.

I know that there have been letters out there by major law firm partners saying, "Is the billable hour really a good thing for mental health, and is it really good for our clients?"

I think that when it comes to flexibility, and a lot of these topics that really would help to retain women in the profession, so that they would stay and continue to advance onto partnership levels. I think that if law firms look at the billable hour construct and really think about whether it's the best thing for their lawyers and their clients, it may be that the conclusion is that it's not. That we need to figure out a different way to harness all of the talent that lawyers have and to better serve our clients, and not have lawyers burn out, leave the profession or feel that there's no other way.

That's something that is going to be a topic that will continue to be debated in the years to come, because it wasn't always that we had the billable hour. That billable hour wasn't even in existence until a certain point in time. Once it became the structure and what was typically used for billing, I think it's just, everyone assumes at this point, that we have no other options, when in fact, we do. Another important aspect of the conversation.

Nicole Fulfree:

All of these points are so important, because I especially agree with the point about encouraging men to take paternity leave as well. I can say, at least anecdotally, I can report on a positive development. Over the past couple of years I've seen in my practice, more men being a little bit more vocal about their role as a parent.

I had an adversary last week ask if he could change the time of the phone call, because he had to take a sick kid to the doctor. My response was, "Of course, no problem." Happy to change the call for that reason.

I was so happy to hear him comfortable to share that reason why, with a big group of attorneys on an email. The chair of my department often talks about how, on certain days, he can't take phone calls between three and four, because that's when he picks his kids up from school.

I love hearing when our male counterparts are being more vocal about their role as parents, because I think it makes it a little bit easier for women to say the same. This report is focused on a compilation of national data, but what does this mean for us here in New Jersey?

Kirsten Branigan:

Here in New Jersey, we have some unique challenges, and a lot of the national data is focused on the largest 200 law firms in the country. While we have some in New Jersey that are on that list, many that are in New Jersey are not in that population. New Jersey also has a lot of small practices that don't necessarily get looked at, as well as, other areas that haven't been looked at, such as public interest in academia and in-house, all sorts of different areas that really don't get captured at that national level with most of those reports.

New Jersey, surprisingly, for the little data that we have, because the last report we have was in 2009 that was specifically focused on New Jersey, and the limited data really shows that New Jersey is trending below the national average, which is a little disturbing considering that New Jersey often touts itself as being ahead of the curve, in terms of being progressive.

I think it would come as a surprise to a lot of people that New Jersey might be below the national average when it comes to women in partnership, equity partnerships, and I think we need to really look at that more closely.

One of the things that we're excited to talk about is, there's going to be a new study in New Jersey that's getting off the ground that was sparked by the report that the Center for Women in Work recently did. It's going to be through Rutgers Law School in Newark, through the International Human Rights Law Clinic, and I am going to work on it along with Professor Penny Venetis. We're going to incorporate into the program, the study, from the ground up.

The law students are going to work on designing a study, working with focus groups, with primary stakeholders, and develop, from the ground up, what needs to get asked here in New Jersey, so that we can get the robust data that we need to get an action plan as to how specifically, in New Jersey, we can tackle these issues.

We're super excited about that, and know that it's going to be a really, really important conversation and study that will develop over the next year and a half.

Once we have that action plan, we will certainly want to come back and share that with all of you, so that law firms can continue to develop meaningful resources. When they have things like women's initiatives, which is great, or DEI initiatives, which are great. They're not just window dressing, that they're meaningful, and most importantly, that they're being tracked.

That the information that's coming out of, what is the initiative really accomplishing for women? Is it really helping women advance? What is the data showing that your initiative is doing to help advance women and tracking that, and making sure that it really is meaningful. That's what our goal is, and we look forward to continuing the conversation with all of you on that.

Rachel Dikovics: I think that study sounds fantastic, and we definitely can't wait to welcome you both back to talk about that study once it's complete. Thanks again, Kirsten and Debra for joining us for today's episode of Real Talk. We're going to include a link to the Center for Women and Work Study in our show notes, so that our listeners can take a look.

We hope that law firms will consider some of the study's recommendations and those discussed on today's episode, many of which, we've organically talked about in lots of previous episodes, so I think a lot of these themes are really common throughout the discussions that we've had on this show. Thanks again, Kirsten and Debra. Thanks everybody for listening, we'll see you next time.

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