

5 Ways Firms Can Avoid Female Atty Exodus During Pandemic

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It has been over six months since the pandemic shuttered offices and disrupted our daily lives and routines. Home offices are now in kitchens, bedrooms and at dining room tables. There are no clear boundaries for starting and stopping our work day, with seemingly unlimited video calls and emails at all hours.

In the meantime, female lawyers are struggling with a lack of child care, months of online or hybrid schooling, and responsibility for shopping, cooking and household chores. Burnout is real and our reservoir of resilience is running dry.

Even before the pandemic, a disproportionately large number of women left private practice because law firm policies and practices were too inflexible to accommodate the home life demands that burden far more women than men. In our 2019 national study of long-term careers for women in law, we found that the top reason women leave law firms is because of caretaking commitments, followed closely by the level of stress at work, and a lack of work-life balance.[1]

Many law firm leaders believe they are doing a far better job at promoting gender diversity and advancing women into equity partnerships and leadership roles than their own firms' experienced female lawyers believe they are doing.[2] This disconnect suggests that to improve its retention of experienced female lawyers, firms require a better and more comprehensive understanding of why women leave.

How have law firms changed their policies and practices in the wake of the pandemic? There is no one answer, but most firms have yet to implement the types of innovative policies that will help their female lawyers address the increasing challenges they now face in meeting client demands and showing their value to the firm.

For example, a substantial number of law firms have not adjusted their billable hour requirements during the pandemic.[3] Female associates are twice as likely as men to be concerned about their billable hours and, at the same time, three times more likely to worry about child care.[4] Working mothers in firms are primarily associates and young partners. For them, the near impossibility of meeting work and home demands is the final straw, and many are now contemplating whether to remain at or leave their law firms.

There are enormous stakes for firms. It is likely that remote working will be prevalent for at least another year. In the meantime, the day-to-day grind is causing many female lawyers to wonder: Why am I working like this? Why stay at this firm? Maybe there is a better way, and a better place, to balance my home life and the practice of law.

The departure of talented female lawyers has a profound and adverse impact on firms. Law firms that cannot offer clients a diverse cadre of female lawyers will be at a competitive disadvantage. Clients are demanding gender-diverse teams because they achieve better results. When female lawyers walk out the door of their law firm, their attrition shrinks the



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pipeline of women who can become equity partners, serve in lead roles on deals and at trials, and attain leadership positions on important and influential firm management committees.

While the pandemic has imposed unprecedented stresses and strains, it also presents firms with a unique opportunity to devise new strategies to retain and advance female lawyers. The overarching goal should be to create a culture where women can thrive in long-term careers, and where firms can offer the broad array of talent that clients are seeking.

Based on our experience advising firms and data we collected in our prepandemic and pandemic surveys, here are a few recommendations.

1. Use the pandemic as an opportunity for positive change.

While the pandemic has been disruptive, the time is right for firms to rethink some fundamental aspects of law firm work, culture and diversity. Many business leaders, especially those in senior positions, perceive the disruption caused by COVID-19 as an opportunity for them to commit more fully to diversity and inclusion.

In a [prior Law360 guest article](#), we wrote about how accountability and strong leadership can make all the difference in whether a firm emerges from the pandemic with a strong base of lawyers from diverse backgrounds. In planning for the future, firms should focus on maintaining their commitment to diversity and strengthening a culture of teamwork and engagement.

Key to engagement are frequent and transparent communications, including on topics of concern to female lawyers. A combination of email communications, video chats and written policies can show that law firm leaders genuinely understand the many challenges their female lawyers are facing. Indeed, such outreach helps to reduce anxiety levels for all lawyers, which is an increasing side effect of the pandemic, and promotes productivity.

Fortunately, many firm leaders routinely and pro-actively apprise attorneys and staff of the firm's current and future goals, opportunities and challenges. Especially helpful would be a continuation of such updates as well as providing specific written guidelines concerning work-from-home expectations, billable hour requirements, technological support, parental resources, and reasonable limitations on work-related communications after normal work hours and on weekends.

2. Provide greater parental resources and support.

It is clear that female lawyers with children are facing increasing pressures juggling work and child care responsibilities in a 24/7 work-from-home environment. We believe that law firms should ask their lawyers, through a simple survey, to identify the types of resources that would be the most impactful. Once information is gathered, individual outreach, virtual town halls and other meetings should be held so that feedback and ideas can be exchanged.

Law firms that are truly committed to retaining female lawyers are providing backup child care and tutoring support, stipends or bonuses to help defray child care costs, and elder care benefits. Firms could also consider providing additional months of paid parental leave that can be taken flexibly to cover child care gaps, or adding more personal time off.

Such efforts will pay dividends in many ways: attracting and retaining working mothers long after COVID-19 is finally over, and enhancing the reputation of the firm as a leader in

gender diversity.

3. Modernize flextime policies and billable hour requirements.

The pandemic should prompt firms to reconsider and revamp their approaches to flextime and part-time schedules and ensure that any such changes will create pathways for promotion and advancement to partnership.

For too long, women have been understandably reluctant to avail themselves of flextime and part-time accommodations because they concluded it would derail their partnership prospects, lead to a perception that they lack dedication and commitment, result in more negative evaluations, and mean fewer opportunities to work on major matters for important clients, all of which are critical to success. In the 2008-2009 economic recession, the first lawyers laid off were part-time lawyers, the overwhelming majority of whom were women.[5]

Hopefully, the pandemic has destigmatized working from home and has brought about a greater understanding that flextime and part-time policies better enable female lawyers to accommodate work and family schedules. In fact, for many working mothers, having flexibility in their work schedules is of primary importance.

None of these policies, of course, should be reserved only for women. In today's world, we believe that many men would welcome the opportunity for flextime and part-time work if they, too, were confident that there would be no penalty for taking advantage of those policies.

Now is also the time for firms to reevaluate and redesign their approaches to the billable hours model.

Many lawyers, particularly women, currently feel great stress that they will not meet their billable hour requirements. During this pandemic year, firms should consider adjusting those requirements for all lawyers and de-emphasizing their importance in evaluations. It is timely, as well, to discuss more permanent changes to models where billable hours are a key factor in compensation.

In corporate law departments, for example, the focus is on client service, creative solutions to problems, and effective collaboration and teamwork. The firms that adopt a model where efficiency is valued over billable hours will be rewarded with loyalty and increased retention, will be better positioned to attract lateral female partners, and will stand out to many clients, especially given the growing use of alternative fee arrangements without regard to billable time.

4. Strengthen wellness and mental health programs.

Many law firms are now enhancing their mental health resources and wellness programs. Even before the pandemic, lawyers had some of the highest levels of anxiety, depression and substance abuse. The pandemic has increased mental health issues, and law firms of all sizes are responding with mindfulness, meditation and well-being programs.

Law firms can also promote the use of counseling services through a third party to further support the well-being of their lawyers. Offering these types of resources demonstrates an understanding by law firm leaders of the enormous stresses that lawyers are confronting and will help attract more talent.

Firms may consider whether to offer wellness programs in the context of affinity groups. For example, certain programs may be better suited to a group of female lawyers or a group of female lawyers with children.

5. Use metrics to understand the impact of law firm dynamics on female lawyers.

Many law firms routinely use metrics for deciding compensation, evaluating associate performance and allocating credit for business development. But metrics can also be key to understanding the day-to-day aspects of practice and advancing gender diversity.

Metrics can be used to analyze how many women and women of color are being assigned to significant matters, participate in client pitches and other business development opportunities, are being tasked to perform nonbillable activities such as recruiting or organizing continuing legal education programs, and included in virtual team meetings. The results can be eye-opening.

As one example, the increased use of video meetings has resulted in women finding it more difficult to speak up, or being overlooked or ignored.[6] In order to ensure that women's contributions are recognized, firms can track who is participating in videoconferences and whether everyone is afforded an opportunity to contribute. Steps can be taken to oversee the new virtual social environments so that virtual happy hours, informal chat rooms and other digital networking gatherings remain inclusive.

The use of metrics is more important than ever to evaluate how female partners are faring financially.

A recent Major Lindsey & Africa survey reported that male partners in major law firms saw an increase of 42% in their overall compensation over the past decade as compared to 22% growth for female partners.[7] In 2018, women partners earned 35% less than their male counterparts. We know from our own research that gender disparity in compensation is a major factor in the decisions by so many senior female lawyers to leave their firms.

More transparent, metric-based compensation systems can ensure that allocation and origination credit is being fairly allocated and help to ameliorate the long-standing and growing pay gap between male and female partners.

Conclusion

Female lawyers around the world are grieving the passing of Justice Ruth Bader Ginsburg, who was a role model and champion for gender equality in society and the legal profession. We share her lifelong mission to create a profession where there are no more glass ceilings left to shatter and female lawyers are finally placed on a level playing field so they can advance and succeed commensurate with their talent. As Justice Ginsburg stressed, "real change, enduring change, happens one step at a time." We hope that the specific steps for change outlined in this article will help to achieve that important goal.

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[1] R. Liebenberg and S. Scharf, Walking Out the Door: The Facts, Figures and Future of Experienced Women Lawyers in Private Practice (American Bar Association, November 2019). The data contained in this report are from a collaborative research project by the American Bar Association and ALM Intelligence.

[2] Id.

[3] A National Survey On The New Normal Of Working Remotely (D. Peery, S. Scharf, R. Liebenberg, K. Corley, et al. (The Red Bee Group, March 2020), <https://www.theredbeegroup.com/wp-content/uploads/2020/03/The-Red-Bee-Group-New-Normal-SURVEY-and-REPORT.pdf>.

[4] The Unprecedented Challenge Of Covid-19: Findings From the 2020 MLA/ATL Law Firm Associate Survey (Major, Lindsey & Africa, May 18, 2020), <https://www.mlaglobal.com/en/knowledge-library/research/associate-satisfaction-regarding-firms-response-to-covid-19>.

[5] S. Scharf and B. Flom, Report of the Fifth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms (NAWL November 2010), <https://www.nawl.org/p/cm/ld/fid=2019>.

[6] A. Gupta, "It's Not Just You: In Online Meetings, Many Women Can't Get a Word In" (New York Times, April 14, 2020), <https://www.nytimes.com/2020/04/14/us/zoom-meetings-gender.html>.

[7] 10-Year Partner Compensation Survey (Major, Lindsey & Africa, September 15, 2020), <https://www.mlaglobal.com/en/knowledge-library/research/10-year-partner-compensation-survey>.