

Working Mothers Need a ‘New Deal’ To Survive the ‘New Normal’

Women are concerned that their performance during the pandemic will define them and harm their careers.

By **Roberta ‘Bobbi’ Liebenberg and Stephanie Scharf** | April 26, 2021, **Law.com**

The pandemic has made it crystal clear that there is an urgent child care crisis in this country. The U.S. Census Bureau reported in August 2020 that 32.1% of unemployed women ages 25-44 stated that lack of child care was the reason for their unemployment, compared with only 12.1% of unemployed men in the same age group. A recent New York Times Special Report on America’s mothers found that 66% of mothers are primarily responsible for child care, compared to 24% of fathers. In fact, mothers are 1.5 times more likely than fathers to be spending an extra three or more hours per day, equal to more than 20 hours a week, on child care and household responsibilities.

Women lawyers are struggling during the pandemic to juggle their professional responsibilities with their child care and household obligations. The onerous burdens shouldered by working women are highlighted in the American Bar Association’s new Report entitled “Practicing Law in the Pandemic and Moving Forward: Results and Best Practices From a Nationwide Survey of the Legal Profession.” The Report was written by The Red Bee Group, of which we are Principals, and was based on a large, nationwide Survey of over 4,200 ABA members. The Report confirms that women lawyers with children are far more likely than men to have had an increase in child care responsibilities and to have had their work disrupted more often by family and household obligations than a year ago, and have fewer hours left in the day to manage their workload and complete assignments. Because most law firms did not reduce billable hour requirements, women were worried about their evaluations, advancement, compensation, and getting furloughed or laid off. Women lawyers with young children complained of being overlooked for assignments or client opportunities and felt they were incorrectly perceived as not being sufficiently committed to their law firms.

Women are concerned that their performance during the pandemic will define them and harm their careers. Research shows that because of the growing disparity in child care responsibilities, men are able to devote significantly more time to focus on their careers, even during the pandemic. To add insult to injury, the New York Times found that 34% of men reported receiving a promotion during the pandemic, compared to just 9% of women.

All women, including women lawyers, are suffering from higher levels of stress as a result of child care obligations and the seemingly non-stop 24/7 work demands of their employers. The problem has been exacerbated by the failure of many legal employers to adopt written policies addressing work-from-home expectations, including setting clear boundaries around appropriate times for e-mails, phone calls, and meetings. Working from home full-time has blurred the lines between the normal “work day” and personal time. This is likely to result in more manifestations of burnout, particularly by women lawyers with children. Not surprisingly, given the intense pressure at work and at home, our Survey data reflect that women

lawyers, especially those with small children, were increasingly contemplating part-time work or leaving their jobs altogether. Indeed, the Survey results mirror the findings of a recent McKinsey “Lean In” survey about women in corporate America, which found that 1 in 4 women were thinking about scaling back or opting out of the work place.

As we emerge from the pandemic, an issue that will remain front and center is the adequacy, affordability, and availability of child care. Remote work will likely remain a part of every legal organization’s culture, as many lawyers may never return to the five-days-at-the-office model. Firms have learned that remote work can be successful, and one upside of the past year is that the stigma formerly attached to working from home has vanished. However, leaders need to be intentional to ensure that flex-time and part-time policies are not only made available, but also that those who utilize these policies will have pathways for advancement, opportunities to work on important matters, and will not suffer adverse career consequences. The so-called “Mommy Track” must finally be eliminated. Leaders should communicate their strong support for workplace flexibility and model that flexibility in their own work schedules, which will send a strong message of encouragement to all their lawyers.

Like all other working women, in order for women lawyers to advance in their careers, access to affordable, high quality child care is essential and must be a priority. Indeed, in our 2019 study, “Walking Out The Door,” the top reason given by experienced women lawyers (those practicing 15+ years) as to why they were more likely to leave the profession was because of child care commitments.

The data from the Practice Forward Survey of ABA members and other research demand that we tackle the structural issues related to child care to avoid a potential exodus of talented women from the legal profession and the workforce in general. That attrition is inimical to an inclusive culture and the creation of a level playing field for women and lawyers of color and the attainment of parity in compensation, equity partnerships, and leadership positions.

Given that the United States has fewer family-friendly policies and subsidized benefits than other rich industrialized countries, the American Bar Association passed a Resolution in February 2021 urging Congress and state legislatures to enact legislation and provide adequate funding to ensure access to high quality and affordable child care and family care. The Resolution also urges legal employers to develop policies and best practices to support such access, including off-site or on-site child care and family care services; stipends; extended family leave; back-up tutoring; and home-schooling and other parental resources.

We are finally beginning to see the light at the end of the tunnel with the pandemic. Now is the time to devise and implement child care policies which will allow women to pursue their careers while ensuring that their families’ personal needs can be addressed. For many of us, there has long been a question as to whether work-life balance is truly achievable. However, there can be no question that this balance will never be possible without adequate child care.

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