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Law Firms Must Note Pandemic's Outsize Impact On Women

By **Roberta Liebenberg and Stephanie Scharf** (July 27, 2020, 4:17 PM EDT)

An attorney friend recently reached out to us with this email: "Will someone please tell me why I am home-schooling the kids, cleaning the house, cooking dinner, doing the laundry, ordering the groceries and so much more, all while working a full-time job, when my spouse spends the day in our home office and only shows up for the family dinner?"

Sound familiar? In the wake of the COVID-19 pandemic, gender roles in many families have reverted to scenes from the 1960s, when fictional brand character Betty Crocker delighted in kitchen work; Betty Draper, the fictional character on "Mad Men" mothered her three children with the help of a martini; and women's rights leader Betty Friedan wrote about "the problem that has no name" — where women give up their own ambitions, dreams and time in the service of husbands and children.

A few months ago, many of us believed that the days of the three Bettys were long gone. But in the new normal of working from home, women are once again trying to juggle their full-time professional obligations with the primary responsibility for home-schooling and other child care, not to mention cooking, grocery shopping, household chores and tending to aging parents.

To add insult to injury, a recent Morning Consult poll for the New York Times revealed that men grossly exaggerate how much they are helping to alleviate these burdens.[1]

Nearly 50% of men claimed that they do most of the home-schooling, yet only 3% of women reported that their spouse or partner is doing more than they are, and 80% of the women said they were doing most of the home-schooling. Unfortunately, from all accounts, working from home too often has meant a reversion to traditional gender roles.

Child care, household duties and the stress of trying to do it all burden working women at all levels even under the best of circumstances. In a first-of-its-kind report, "Walking Out The Door," sponsored jointly by the American Bar Association and ALM Intelligence, we examined the reasons why experienced female lawyers are so much more likely to leave the practice of law than their male colleagues.[2]

The survey was administered online to a sample of men and women in private practice at the National Law Journal 500 law firms, and who have practiced law for at least 15 years. The data set incorporates responses from 1,262 individuals, of whom 70% were women and 30% were men.

Survey results make clear that a key factor in long-term careers for women is the impact of caretaking commitments and higher levels of responsibility at home. Indeed, 54% of experienced women lawyers reported that they were fully responsible for arranging child care, compared to just 1% of men.

Women also suffer from the misperception that they lack commitment to their careers. Over 60% of experienced female lawyers reported that their firms viewed women as not sufficiently committed to their careers, compared to that perception for only 2% of men.

We note that this stereotype becomes even more entrenched after women have children (particularly after the second or third child), and has real-world consequences: more negative evaluations for experienced female lawyers and fewer opportunities to work on major matters for important clients. There is an almost inevitable domino effect that leads to decreased compensation, advancement and success at a law firm.

In late March, we helped conduct a national survey of how well the legal profession was adapting to full-time remote working.[3] In "The New Normal of Working Remotely," we assessed how the profession was coping with the move to full-time remote work, use of remote work policies, personal experiences in adapting to the COVID-19 crisis, and the resources that legal professionals found most helpful for adjusting to this new environment.

The sample of 300 respondents included lawyers at various levels of seniority at law firms, corporate law departments, nonprofit organizations and government agencies of various sizes.

One finding from the survey was that many law firms continued to expect their lawyers to work the same number of hours as before the pandemic. For most women, it is hard to imagine how expectations about billable hours can remain unchanged in the face of closed day care centers and summer camps, continued health concerns about having babysitters, nannies and grandparents assist with child care, real questions about when schools will open and whether they will be safe, and the likelihood that much of the profession will continue to work remotely for quite some time.

Not surprisingly, people are feeling a greater sense of isolation, anxiety and pressure to adapt to the ongoing reality of a diffuse work environment, with no sense of how long this new normal will last. The never-ending demands of clients and partners mean that, for many female lawyers, working from home has become a 24/7 proposition, which is neither healthy nor sustainable.

While the pandemic has been difficult and frightening and has greatly changed our lives and how we work, we also see it as a huge opportunity — indeed a business imperative — to avoid the mistakes of the past. What is to be done? We focus here on the critical factor of leadership.

Leadership really matters. No law firm can do well in developing and advancing talent, including women and lawyers of color, without strong actions and commitment at the highest level.

It is not enough to simply issue memos or strategic plans. Leaders need to talk about their expectations and goals and hold themselves and



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everyone at every level of leadership accountable for meeting them. A good leader demonstrates with their actions, not just words, that diversity and inclusion are a core part of the firm's culture and that even during a pandemic, these values will not take a back seat.

We know from the 2008-2009 recession that female lawyers bore the brunt of firms' economic downturn, with an even worse impact for women of color. Recent studies show that pre-pandemic levels of inclusion were not much better than 2008.[4]

As law firms are now once again making difficult decisions about furloughs, compensation cuts and even layoffs, they would do well to ask whether implicit biases are seeping into those decisions. Metrics and statistics should be used to measure and examine the hard data on work assignments, compensation, promotions, allocation of credit for business, client succession, participation on client pitches and much more, to ensure that women and lawyers of color are not being shortchanged.

While remote working has some advantages, there are downsides. One is reduced attorney engagement, especially for women. A firm is well served when its leaders reach out to female and diverse attorneys to make sure they actively participate in video business meetings, receive necessary resources, and have consistent access to new matters and new clients.

Part of being an effective leader is to engage in pulse checks, to avoid actions that are contrary to a culture of inclusiveness and defeat the firm's goal of retaining and advancing a diverse cadre of talent. The COVID-19 pandemic and its aftermath are not reasons for backtracking on diversity, equity and inclusion in firms and throughout the profession.

We are at a watershed moment where the massive upheaval caused by the pandemic has created a unique opportunity to implement meaningful structural and cultural changes that could benefit female lawyers and the firms where they work. Women should not have to make the same Hobson's choice that was depicted by Betty Crocker, Betty Draper and Betty Friedan: the choice between being a mother or fulfilling professional goals, potential and ambition.

It's time to put to rest the gender stereotypes of the past and achieve gender equality both at home and at the office. The key challenge for every law firm is to make sure that diversity and inclusion are core values, with meaningful strategies, goals and achievements in our shared new normal.

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[1] Nearly Half of Men Say They Do Most of the Home Schooling. 3 Percent of Women Agree. The New York Times (May 6, 2020), <https://www.nytimes.com/2020/05/06/upshot/pandemic-chores-homeschooling-gender.html>.

[2] The Walking Out the Door report is available at https://www.americanbar.org/content/dam/aba/administrative/women/walkoutdoor_online_042320.pdf.

[3] The Red Bee Group report, The New Normal of Working Remotely, is available at https://www.theredbeegroup.com/wp-content/uploads/2020/03/The-Red-Bee-Group__New-Normal-SURVEY-and-REPORT.pdf.

[4] See NALP's 2019 and 2018 diversity reports: https://www.nalp.org/uploads/2019_DiversityReport.pdf; https://www.nalp.org/uploads/2018NALPReportonDiversityinUSLawFirms_FINAL.pdf.

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