

Equal Opportunity in the Profession Survey

In January 2018, WBASNY's Equal Opportunity in the Profession Committee sent a survey to its members for the purpose of collecting information regarding advancement in their legal careers, sexual harassment, discrimination and pay inequality in the workplace. A list of the questions are in Appendix A. The survey was sent out to WBASNY's members and EOIP received 295 responses to 25 questions addressing these issues.

The responses represented a diverse group across employment, length of experience and the counties they worked in. A majority of those surveyed worked in private practice in some capacity (60.78%) in either small or large law firms (large law firms were those with 20 or more attorneys) or solo practitioners. Approximately 28.62% of the respondents worked in either government or within the court system. The remaining respondents were working as in house counsel, in academia, a job outside of the legal profession, retired, taking a break or a student at the time of the survey.

Those surveyed represented attorneys practicing in each county of New York State, other states and some respondents who only practiced in Federal Court.

A significant percentage of the respondents (38.14%) had been practicing law for 26 or more years while only 10.30% of respondents were newly admitted attorneys practicing 0-5 years. 23.02% of respondents had been practicing law for 6-15 years and 27.49% of respondents had been practicing for 16-25 years.

I. CAREER DEVELOPMENT AND ADVANCEMENTS

The first part of the survey sought advice/tips/suggestions that respondents would have liked to receive about (1) obtaining advancement in their employment, (2) advice that the respondent would have for a junior attorney or someone looking to enter the practice of law, or (3) advice they wish they had received before entering the legal profession. A majority of responses (40%) to the questions in these areas focused on wanting advice about maintaining a work/life balance, including issues of how to discuss maternity/paternity leave with employers, how to set boundaries for work/personal life balance early on in your employment, and the need to sacrifice your personal life for work.

Another major concern that those surveyed wanted advice/suggestions on was related to compensation, specifically related to negotiating a salary a time of an interview (20.67%) and how to negotiate a raise (26.82%). Respondents were also interested in receiving tips about how to get on how to either get on a partnership track (5.59%) or get an equity partnership (9.50%). Respondents also sought to receive advice about ensuring that salary is commensurate with their workload.

In terms of career advancements, respondents also sought tips practice management, including but not limited to staff/employee management, marketing, revenue streams, growth of firms, referrals and diversity in

law firms; changing careers, including changing the area of law you are currently practicing and retirement; and part-time work opportunities, including how to find part-time work and be appropriately compensated for part-time work.

In terms of offering advice for those entering the legal field or advice the respondents wished they had received before entering the legal field, those surveyed suggested that it was important for new attorneys set boundaries especially when it came to work/personal life balance. The respondents also suggested that it was important to have a strong support system at home and find mentors at work. Networking was also highlighted as well as joining bar associations to help with networking and mentorship opportunities. Patience with yourself and your work was another piece of advice offered by senior attorneys but they also wished that they knew to stick out the hard times because they do not last forever. Respondents stated that prior to entering the field they wished they knew about law firm management and learning to give presentations to clients. Respondents also wished to know how to address issues of gender inequalities prior to entering the legal field.

Respondents also offered resources to women entering the legal field as well as offered suggestions for speakers for topics relating to succeeding in the legal field specifically directed at women attorneys. The list of resources provided are included in Appendix “B” and “C.”

II. DISCRIMINATION

The next part of the survey focused on discrimination that those taking the survey faced or were aware of in the work place either based on gender or specifically related to parenting issues.

a. Gender Discrimination

Respondents were asked either if they had experienced gender based discrimination in the work place in the last five (5) years or if they were aware of gender based discrimination in the work place in the last five (5) years. 40.34% of respondents reported that they themselves had experienced gender based discrimination in the work place and 37.38% reported that they were aware of gender based discrimination in the work place.

The types of gender based discrimination that those surveyed either experienced or were aware of were related to receiving of salary or benefits as part of their employment, being treated lesser than male attorneys, including ideas of male attorneys being valued more, secretarial duties being placed upon female attorneys, male attorneys given more importance in Court, female attorneys being confused for the client or a secretary, and female judges being treated as less competent by male attorneys. Respondents also reported sexual harassment in the work place, including inappropriate jokes and unwanted sexual advances or touching. Those surveyed reported that those with children were given smaller cases

because they had children and were taken off the partner track once they announced their pregnancy.

b. Discrimination based specifically on parenting issues

Respondents were separately asked about instances where either they experienced or learned of parenting issues adversely affecting them or a colleague's legal career and/or advancement. 40.10% of those surveyed stated that they had either experienced it themselves or knew of a colleague who had experienced this type of discrimination. The adverse effects that those surveyed reported were questioning of ability to do the job, including being removed from trial or litigation work, being admonished for taking time off, and being reduced to part time work. One respondent reported that their law school advised them not to discuss children during interviews for jobs.

Those surveyed also reported that the expectations around pregnancy and paternal leave were unrealistic reporting that they were expected to return to work quickly and included instances where pregnancy was not seen as a legitimate reason to reduce workload. Respondents also reported not having private locations for breastfeeding in the workplace.

Respondents also reported that they had reduced career opportunities including being taken off the partner track or not being promoted as quickly. They further reported that they faced pay inequities such as men being paid higher because they have "families to support" and women being paid lower salaries.

Respondents also reported discrimination in Court relating to parenting issues such as judge not understanding the need to adjourn a case because a child was sick and one instance where a respondent reported that a judge told them to choose other area of law if they wanted to have a family.

III. HARASSMENT

The next part of the survey focused on sexual harassment either experienced by respondents or instances of sexual harassment that respondents were aware of. The survey also inquired about sexual harassment training. This part of the survey also asked respondents that were part of a protected class about their experiences of harassment. The protected classes included racial or ethnic minority, having a disability or health concern, holding specific religious beliefs, being transgender or part of another protected class.

a. Sexual harassment

Those who took the survey were asked if either they experienced any issues of sexual harassment in the workplace in the last five (5) years or if they were aware of sexual harassment in the workplace in the last five (5) years. 17.51% of respondents stated that they

had experienced sexual harassment in the workplace in the last five (5) years and 20.20% reported that they were aware of sexual harassment in the workplace in the last five (5) years.

The types of sexual harassment faced were unwanted sexual advances, sexual comments and comments about appearance. Those surveyed reported that they received the sexual harassment from clients, other attorneys, co-workers, judges and court officers.

b. Sexual harassment training

Those who took the survey were asked if their place of employment has a policy or provides training on sexual harassment, personal relationship within the firm/organization, gender discrimination, parenting issues, wage equality, minorities or protected classes. 54.10% of respondents reported that such information existed within their place of employment. The types of information included employee handbook, informal policies and sexual harassment training.¹

Of those that had such policies existed within their workplace, 27.54% were willing to share those with WBASNY.

c. Harassment based on protected classes

Respondents were asked if they are part of a protected class that includes a racial or ethnic minority, have a disability or a health concern, or hold religious beliefs, or belong to a protected class or are transgender and if they had experienced any harassment based on those categories in the last five (5) years or if they were aware of people being harassed based on those protected classes in the last five (5) years. Those in the protected classes reported that 14.42% of them had experienced discrimination based on those protected classes and 17.60% were aware of harassment based on these protected classes.

The types of incidents described were people assuming the attorney was the defendant or the court reporter or a cleaning person. Those surveyed also reported receiving racially charged comments, such as telling an attorney to “speak English” and being thought less capable based on race. Those surveyed also reported religious based discrimination, homophobic comments and age based comments. Those surveyed reported that there were incidents where no accommodation was made for a disability.

Those surveyed that were part of these protected classes, further reported that they experienced inequality in terms of compensation as well as their ability to be promoted. Those in the protected classes also felt that they were being excluded from policy making decisions within their workplace.

IV. REPORTING OF DISCRIMINATION OR HARASSMENT

¹ Since the date of this survey, New York State now has a statutory requirement that all employers provide sexual harassment training annually.

Throughout the survey, respondents were asked whether they reported any of the discrimination or harassment they experienced or whether the discrimination or harassment they were aware of was reported. For those that did report the discrimination or harassment, they were asked whether anything was done to stop the discriminatory practice or harassing behavior. Overwhelmingly there was little to no reporting done of any discrimination faced and for those who reported the behavior, rarely was there any action that either stopped or addressed the discriminatory practice or harassing behavior.

a. Gender based discrimination

For gender based discrimination, 85.11% of respondents who experienced gender based discrimination themselves stated that they did not report the discriminatory behavior and 92.50% of those that were aware of gender based discrimination did not report it. Of the 14.89% that did report the gender based discrimination, only 28.57% of the reported discrimination was addressed that they experienced themselves. For the 7.5% that were aware of discrimination that happened, only 33% of those reported incidents were addressed.

b. Discrimination based on parenting issues

As to reporting of instances where parenting issues adversely affected the respondent or a colleague's career advancement, 93.67% stated that they did not report the discrimination and of the 6.33% that reported the behavior, only 20% of that discrimination was addressed.

c. Sexual harassment

Of the 17.51% that experienced sexual harassment in the workplace, 10.53% reported that they reported the behavior and when that behavior was reported, nothing was done in any of the instances. Of the 20.20% that were aware of workplace sexual harassment, they reported that 7.32% of the instances were reported and that 33.33% of the sexual harassment incidents reported were addressed.

d. Harassment based on protected classes

Of those who experienced harassment based on a protected class themselves, only 6.67% reported the incident and the one person who reported the behavior reported that the harassment was addressed. Of those who heard of instances of harassment based on a protected class, 4.55% stated that it was reported and that in the one instance where it was reported, the issues was addressed.

V. SALARY INEQUALITY

The final part of the survey addressed salary inequality. Those who took the survey were asked about whether they or their female attorney colleagues are paid the same salary or rate per hour as their male counterparts. 60.95% of respondents reported that they either believed

or knew that female attorneys were not paid at the same salary as their male counterparts. 60.95% of respondents reported that they either believed or knew that female attorneys were not paid at the same salary as their male counterparts.

Those surveyed were asked what various organizations and groups could do to address the issues of salary inequality. The following responses were received:

a. The government

Those surveyed suggested that the government can prevent or remedy salary inequality by electing new leaders, passing legislation to address the pay gap including public records of salary for government positions, prevent ability to ask about previous salary² and require all employers to publish salaries. Those surveyed also suggested that passing the Equal Rights Amendment and passing paternal leave laws would help address pay inequality issues. Those surveyed also suggested that prosecuting entities that violate equal pay laws would be able to remedy salary inequality. Unfortunately, some respondents felt that nothing or very little could be done by the government to address this issue.

b. Employers

Those surveyed were asked what employers could do to help prevent or remedy salary inequality. One common answer was that they could actually pay male and female attorneys equally. Other suggestions included changing the culture of law firms to encourage parental leave and family time, have evaluation methods of job performance that are not linked to gender, have implicit bias training for employers and do internal auditing of their own salary inequalities. Those surveyed also suggested having more women in executive roles would address issues of pay inequality. Respondents also suggested having more transparency in salary by publicizing salaries and that employers not be allowed to ask questions about previous salaries at job interviews.

c. Employees/Job Candidates

Those who took the survey were asked what employees or job candidates could do to prevent or remedy salary inequality. Respondents suggested anonymous reporting system for salaries, request information from employers about salaries, have more women in decision making roles and speaking up and engaging in discussions about salary inequality. Some suggested that employees and job candidates seek resources on how to negotiate salaries. Other suggestions were that it is not the employee's responsibility to remedy salary inequalities.

d. WBASNY

² New York State passed a statutory prohibition of wage history inquiries in the hiring process, effective January 2020.

Those who took the survey were asked what WBASNY could do to prevent or remedy salary inequality. Respondents suggested that WBASNY advocate for regulations, including lobbying for equal pay and advocate for more women to be hired. A suggestion was made that WBASNY start an anonymous database for women to input salaries or develop another method to collect and disseminate data about equal pay. Respondents also suggested that WBASNY educate courts, members and the public about pay inequality, how to negotiate salaries and provide webinars for the types of discrimination faced by women in the legal field and in other workplaces.

VI. CONFIRMATION OF FINDINGS OTHER STUDIES/SURVEYS

Since the EOIP survey was completed, two other studies and surveys were completed on some of the topics covered by this EOIP survey: Women Lawyers on Guard's ("WLG") Sexual Harassment and Misconduct in the Legal Profession A National Study³ in 2019 and New York State Judicial Committee on Women in the Courts' Gender Survey⁴ in 2020.

Women Lawyers on Guard conducted a survey amongst a national network of women and men to determine the parameters and impact of sexual misconduct and harassment experienced in the legal profession. The study's focus "was to dig deeper into the experiences of those who have been harassed" in order to "provide a clearer picture of harassing behaviors and the consequences of the individual, the organizations and the profession."

WLG's study found that while the frequency of harassment has decreased since 30 years ago, the extent and breadth of misconduct and harassment continue to remain an issue including cultures of harassment within many workplaces and harassment by clients and opposing counsel. WLG's study also found that reporting systems to discourage this type of behavior are generally ineffective as most harassers face little consequences for their actions. WLG's study found that women at every level are being harassed and that age, race/ethnicity and gender identity were seen to be compounding factors for harassment.

WLG's findings led them to conclude that while training programs and reporting systems are the bare minimum in what needs to be done in reporting and discouraging harassment, much deeper conversations need to be had with leaders of organizations, early childhood educators, parents, consultants and lawyers to craft new policies and enforcement mechanisms to truly root out harassment and make reporting easier with effective consequences for harassers.

New York State Judicial Committee on Women in the Courts' Gender Survey was focused on updating their report from the 1980s as to the treatment of female attorneys, litigants and witnesses in the courts. The survey found that since their previous survey, the amount of unwelcome physical contact experienced by attorneys and court personnel, both men and

³ The complete findings can be read here:

<https://womenlawyersonguard.org/wp-content/uploads/2020/07/Still-Broken-Full-Report.pdf>

⁴ The complete findings can be read here:

<https://www.nycourts.gov/LegacyPDFS/IP/womeninthecourts/Gender-Survey-2020.pdf>

women, was significantly reduced; however, when it came to reporting sexual harassment, only 31% of female respondents and 49% of male respondents knew how to make such reports.

In terms of treatment by judges, half of female respondents also felt that male judges appeared to give more credibility to statements/arguments made by male attorneys and 29% of respondents felt the same about female judges. The study also found that female witnesses were given less credibility than male witnesses and specifically when it came to prostitution cases, that the patron was treated with less severity than the prostituted person.

The Judicial Committee on Women in the Courts made recommendations based on its findings including effectively publicizing the court system's procedure for filing sexual harassment and other complaints, mandating regular training for judges and court personnel designed to make them aware of and recognize gender bias and how to take appropriate immediate action when such behavior is reported.

VII. CONCLUSION

The EOIP survey found that when encountered with instances of discrimination or harassment, either based on gender, parenting issues or other protected classes, and sexual harassment that those who either experienced it or were aware of it do not report the instances and when those were reported, the issues were not been addressed.

The survey further found that issues of pay inequality based on gender are still prevalent and that career advancement for female attorneys are being limited by outdated perceptions of women throughout law firms and the Courts.

APPENDIX

A

Survey Questions

1. Are you working:
 - A. At a law firm with 20 or more attorneys
 - B. At a law firm with 20 or fewer attorneys
 - C. As a solo practitioner
 - D. In house
 - E. In government
 - F. In the court system
 - G. At an educational institution
 - H. No, I am retired
 - I. No, I am taking a break
 - J. other

2. Which counties or boroughs do you practice law in? (This is relevant information for the New York City Commission on Human Rights)

3. How many years approximately have you worked in the legal profession?

4. What tips/suggestions would you like to receive about advancement in employment, or how to engage in communication with employers (you may select more than one alternative):
 - A. How to negotiate a salary at an interview (please include any ideas)
 - B. How to negotiate a raise (please include any ideas)
 - C. How to get on a partnership track (please include any ideas)
 - D. How to get equity partnership (please include any ideas)
 - E. How to manage having children and a career (please include any ideas)
 - F. Other (please explain).

5. What career or employment suggestions would you have for a less experienced attorney (you may select more than one alternative and if you disagree with any options, please say so):
 - A. Need to “lean in” (please describe any suggestions on how to do this and what you have found to work in the legal profession)
 - B. How to find a work/personal life balance (please explain)
 - C. Need to sacrifice personal life for career early on (please explain)
 - D. Need to establish work/life boundaries early on (please explain)
 - E. Other (please explain)

6. What advice do you wish you had as you were entering the legal field? (you may select more than one alternative)
 - A. Work with and support women colleagues
 - B. Find mentors
 - C. Advocate for yourself
 - D. Pros and cons of job hopping (please explain)
 - E. Join associations
 - F. Give presentations to potential clients (please explain ideas on how to do this)
 - G. Stick out the hard times; they don't last forever
 - H. Other (please explain)
7. Please list any suggestions for resources (books, videos, etc.) that you would offer to a woman entering the legal field or switching to a different area of practice such as Lean In, A Woman's Guide to Successful Negotiating, The Next Generation of Women Leaders, and What You Need to Lead but Won't Learn in Business School.
8. Do you have any suggestions for speakers on topics relating to succeeding in the legal field, specifically directed to women attorneys (Please list, with contact information if possible)
9. Have you experienced sexual harassment in the workplace (office, courthouse, etc.) in the last five years?
 - A. No
 - B. Yes (Please describe - answers will remain anonymous)
 - C. If yes, was it reported and what was the result?
10. Are you aware of any instances of sexual harassment of women attorneys in the workplace (office, courthouse, etc.) in the last five years?
 - A. No
 - B. Yes (Please describe - answers will remain anonymous)
 - C. If yes, was it reported and what was the result?
11. Have you experienced gender discrimination in the work place (office, courthouse, etc.) in the legal profession in the last five years?
 - A. No
 - B. Yes (Please describe - answers will remain anonymous)
 - C. If yes, was it reported and what was the result?
12. Are you aware of any instances of gender discrimination in the work place (office, courthouse, etc.) in the legal profession in the last five years?
 - A. No
 - B. Yes (Please describe - answers will remain anonymous)
 - C. If yes, was it reported and what was the result?

13. Have you experienced or learned of any instances where parenting issues have adversely affected your or a colleague's legal career and advancement?
 - A. No
 - B. Yes (Please describe - answers will remain anonymous)
 - C. If yes, was it reported and what was the result?

14. Are you aware of any instances of harassment of attorneys in the legal profession based on race, ethnicity, disability, religion, health or sexual orientation ("minority/protected class") in the last five years?
 - A. No
 - B. Yes (Please describe)

15. What do you think can be done by the government to help prevent or remedy salary inequality?

16. What do you think can be done by employers to help prevent or remedy salary inequality?

17. What do you think can be done by WBASNY to help prevent or remedy salary inequality?

18. What do you think can be done by employees and job candidates to help prevent or remedy salary inequality?

19. If you are a racial or ethnic minority, have a disability or a health concern, or hold religious beliefs, or belong to a protected class, or are transgender, have you experienced instances of harassment in the legal profession based on those categories or based on your sexual orientation ("the Categories") in the last five years?
 - A. No
 - B. Yes (Please describe)

20. Are you aware of any instances of harassment of attorneys in the legal profession based on the Categories in the last five years?
 - A. No
 - B. Yes (Please describe)

21. Do you think attorneys in the Categories are paid the same salary or rate per hour as their counterparts who are not in the Categories?

22. Have you (if you fall within the Categories) or your colleagues in any of the Categories, experienced any other instances of inequality in the last five years?
 - A. No
 - B. Yes (Please describe)

23. Does your place of employment have a policy or provide training on sexual harassment, personal relationships within the firm/organization, gender discrimination, parenting issues, wage equality, minorities or protected classes?

A. No

B. Yes (Please describe)

24. Would you be willing to provide WBASNY with a copy of any such policy?

A. No

B. If yes, please forward the policy to info@wbasny.org or mail it to WBASNY at Post Office Box 936, New York, NY 10024

APPENDIX

B

Suggested Resources for Women Entering the Legal Field

The Ask by Laura Fredricks
Ask for It by Linda Babcock & Sara Laschever
Do What You Are by Paul D. Tieger & Barbara Barron
Getting to Yes by Roger Fisher
Loving What Is by Byron Katie
Multipliers by Liz Wiseman
The New Lawyer by Julie Macfarlane
No Excuses by Brian Tracy
On the Road by Gloria Steinem
Shortcut Through Therapy by Richard Carlson
Spy the Lie by Philip Houston & Michael Floyd
Taking the War Out of Words by Sharon Ellison
Unfinished Business by Ann Marie Slaughter

APPENDIX

C

**Suggestions for Speakers on Topics Relating to Succeeding in the Legal Field, Specifically
Directed to Women Attorneys**

Michelle Alexander
Helena Blank
Rosanna Branda
Dawn Cardi
Marybeth Cale
Hon. Mae D'Agostino
Pamela Daley
Hon. Ruth Bader Ginsburg
Carol Schiro Greenwald
Carla Harris
Helena Heath
Georgia Kramer
Christine Lagarde
Shannon LawGuerre-Maingrette, Esq.
Liz Midgley
Michelle Mirman, Esq.
Ellie Nieves
Hon. Karen Peters
Dr. Arin Reeves
Marianne Ruggiero
Angela Rye
Hon. Shira Scheindlin
Barbara Schiefeling
Kathy Sheehan
Ann Marie Slaughter
Leslie Stein
Hon. Nancy T. Sunshine
Elizabeth Warren
Hon. Elizabeth Wolford
Hon. Deborah Young