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INSIGHTS

Accelerating Progress on Gender Equity in Law Firms

The issues of gender equity and diversity have been major topics of discussion in law firms for decades, but in recent years law firms have begun to focus more critically on these issues, and in particular on increasing the number of women and diverse lawyers within partnership ranks and leadership. While there are bright spots, progress remains slow.

In this Insight, we are focusing primarily on gender equity at law firms, but many of the challenges and proposed solutions apply to diversity more broadly.

Gender Equity in Law Firms

On the positive front, we have seen a material increase in the number of both women and diverse lawyers in law firm leadership roles and in new partner classes in recent years. This is in part a result of the commitment of many law firms to Diversity Lab's Mansfield Rule, which requires that firms consider candidate pools that are at least 30% diverse for hiring, promotion and leadership selection. The rule was first adopted by some firms in 2017, and defines diverse lawyers as women, lawyers of color, LGBTQ+ lawyers, and lawyers with disabilities. Participating firms are now much more deliberate in their hiring, partner promotion, and leadership selection processes.

There is not only an equity argument supporting this progress but also a practical business case, as more large companies are seeking diverse teams for their legal work as part of their commitment to ESG principles.

However, the story isn't entirely rosy for gender equity at firms. While the ratio of male to female associates in US firms has been close to 50:50 for more than 15 years, the percentage of female attorneys relative to male attorneys drops off at the partner level, and even further among senior partners. The National Association of Women Lawyers 2021 Survey of large law firms found that 47% of associates were women, but that statistic dropped to 32% at the non-equity partner level, and 22% at the equity partner level. Some of the decline in the percentage of women at more senior levels is a function of equity partner admissions, but the attrition of female partners is a significant contributing factor for some firms. Further, in our work with law firms on partner compensation, we often see that a higher proportion of women equity partners are in the bottom half of the equity compensation scale.

Addressing Gender Equity at the Partnership Level

Based on our work with law firms, pay equity analyses typically indicate that while female partners are paid less on average than their male counterparts, they are paid fairly based on key performance metrics. In other words, male partners have, on average, both higher origination and production metrics than female partners. Some of this is explained by seniority, but more of it is explained by shortcomings in the metrics themselves, Compensation Committees are attuned to looking for fairness based on performance, and indeed one of the ways firms try to avoid bias in compensation decisions is to rely heavily on the metrics. However, this puts a premium on ensuring that the underlying metrics are the right ones and are fairly allocated.

A key component of accelerating progress on gender equity is improving retention of female partners. To accomplish improved retention, law firms must ensure that female partners have the potential to reach the upper levels of compensation and believe that their contributions are appropriately recognized. This requires looking at the drivers of performance metrics and assessing how these drivers may be negatively impacting women in the firm. Based on our work with firms we see a few areas where progress needs to be made, including:

Actively managing origination allocations. Because origination of business is the primary driver of compensation in many firms, partners often demonstrate competitive behavior in claiming credit. Firms are increasingly providing for sharing

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origination credit, which can be helpful in recognizing that in many scenarios, more than one person has contributed to originating and building the client relationship. However, loosely structured sharing or splitting models can increase internal competition for credit. While not universal, women are more likely to get the short end of the stick in these competitions.

Firms can do two things to reduce competition and increase consistency in the allocation of credit. First is to provide a formal policy and robust guidelines on origination credit and sharing scenarios, including a series of specific examples of how credits should be allocated, to provide guidance to partners. Second is to have proactive oversight of the application of the guidelines, rather than simply providing for a (rarely used) appeal process.

An expanded view of contributions to client relationship development, expansion, and retention. Origination of clients as a key revenue metric is unlikely to change. But increasingly firms are recognizing that large client relationships require partners to play multiple roles – from active management of the relationship to specialized expertise without which the firm would not be able to take on a matter. Firms are increasingly looking at the range of roles partners play together in winning and retaining client relationships. By measuring these contributions, firms ensure that they are not limiting them to soft factors or simply paying lip service to them as part of compensation deliberations. This approach helps firms recognize the contribution that more junior partners, including female partners, make to clients and to the firm.

Deliberate approach to client succession planning. Succession planning is a weakness in many firms. It is often addressed too late when there are few options, and the decision about succession is left up to the retiring (or departing) partner. While many retiring partners factor gender and diversity into their thinking about who to position as his/her successor, others, either consciously or unconsciously, do not consider or prioritize these characteristics. This failure to factor equity into succession choices often leads to an imbalance in the transition of client relationships, as male partners are more likely than female partner to 'inherit' relationships and the corresponding originations.

For female partners to be viable candidates for assuming responsibility for client relationships, they need to not only be on the client team in the first place but also have been positioned as a key member of the team in the client's eyes. This requires being much more intentional about succession planning, and more importantly, thinking about who should be on the client team and what role(s) they should play. Well managed firms treat succession of key clients as a top priority, and firm leaders work with relationship partners well in advance of potential retirement to develop client specific plans. A hands-on management approach to succession planning presents a prime opportunity for firm leaders to ensure that female partners are considered for client transition opportunities.

As we have written before this also highlights why there needs to be a focus on 'sponsorship' programs as part of a firm's career path planning, and not an over reliance on mentoring programs. A sponsorship program puts a more equitable structure around how a firm directs senior, powerful leaders to utilize their positions and influence to promote underrepresented groups into stretch assignments, client opportunities and leadership roles.

Thoughtful approach to non-billable assignments. There is a Catch-22 when it comes to ensuring that female partners are represented in firm initiatives and management roles. Because there are far fewer female partners, there are often more demands for their time on firm matters than there are of male partners. This focus on firm matters often comes at a time in a female partner's career when her male peers are focusing on business development and building their book of business. Further, women are more often considered for internally facing roles (e.g., mentoring, associate evaluation) rather than externally facing roles (e.g., department/practice chairs). Firms try to do the right thing by creating diverse committees and leadership teams, but it can have unintended consequences on the progress of women in their legal practice.

While firms must continue to ensure that firm committees and leadership and management positions are representative of the makeup of the firm, leaders need to ensure that women are not being funneled to principally internally facing roles. In addition, leaders must ensure that women are not taking on too many firm roles compared to male partners, given that this time is generally not rewarded at the same level as business generation

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These compensation and role related strategies represent only a fraction of the range of actions firms must take in order to improve retention of women lawyers, and particularly female partners. However, the need to ensure recognition and a fair rewards system for female partners is real, and these actions are an important piece of the overall strategy firms must pursue in order to accelerate progress to gender equity. As clients increasingly focus on the DE&I and ESG credentials of their outside law firms, firms who accelerate their progress on this front will be aligned with and rewarded by their clients.

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