

# Overview of Gender Diversity in Business Law

A RESEARCH COMPENDIUM

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## I. Introduction

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Since 2016, women have outnumbered men in law schools. Although this number continues to increase, the COVID-19 pandemic had a substantial impact on women's participation in the legal field. Even before the pandemic, women were **vastly underrepresented in senior leadership positions in the legal industry**. While it is unclear what the long-term effects of COVID-19 will be, the short-term **impact of the pandemic paints a worrying picture** for an industry in which women have only just begun to get their foot in the door.

In law firms, women are recruited into entry-level associate positions at a rate that reflects their representation in legal education, but the statistics decline sharply at the non-equity and equity partner levels. Women encounter a similar imbalance in their roles as general counsel, and women of color account for an even smaller number in both law firms and in-house.

Moreover, women in law firms continue to be paid at a lower rate than men even though they bill nearly the same hours. This disparity widens as one climbs the ladder, in accord with the growing gap in representation. Similarly, women earn significantly less than men as general counsel. Women of color encounter even greater inequity in pay.

This compendium offers statistical insight gathered from various resources, including reports and surveys, to highlight the clear lack of gender diversity in business law. The aim of this compendium is to spread awareness of the inequity in business law and to encourage law firms and companies to champion gender diversity.

First, we discuss the **"four dimensions of gender diversity,"** as outlined by McKinsey & Company, which are representation, promotion, attrition, and external hiring. In the next section, we address the gender pay gap in business law, regarding both law firm positions and in-house roles. Then, we explore the benefits of women in business law and the reasons why **firms should work to improve gender representation**. We wrap up with a discussion of the impacts of the COVID-19 pandemic and suggestions on how to achieve the goal of gender parity in business law.



## II. The Four Dimensions of Gender Diversity

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FRAMEWORK TAKEN FROM MCKINSEY & COMPANY

1. Representation
2. Promotion
3. Attrition
4. External Hiring

## II. The Four Dimensions of Gender Diversity

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### 1. Representation

#### “2021 Survey on Retention and Promotion of Women in Law Firms” – National Association of Women Lawyers (NAWL)

NAWL’s 2021 survey reveals that, although at least half of the nation’s law students have been women for over a decade and a half, the retention of women in the legal profession has not increased accordingly. However, the number of women in high-influence positions at law firms has been growing more quickly, in some cases almost doubling over the last 15 years.

#### “The 2022 Diversity Report Card” – California State Bar

The California State Bar’s diversity report reveals that while women make up 51% of the state’s population, they are only 44% of California’s attorneys. While this number was slowly increasing up until 2019, it has stagnated since then. There are also noticeable disparities in representation between white women and women of color, with 26% of attorneys in the state identifying as white women and only 18% identifying as women of color. However, since 2021 women of color have made up the largest demographic group of attorneys admitted to the bar, leading to increased ethnic and gender diversity in California’s legal profession.



## II. The Four Dimensions of Gender Diversity

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### 2. Promotion

#### “Walking Out the Door” and “Left Out and Left Behind” – The American Bar Association

For over a decade, women have made up 45 - 50% of new hires at firms, but in 2018 accounted for only 20% of equity partners. Women of color are particularly underrepresented, comprising only 3% of all equity partners or 12% of female equity partners. On average, men are between two and five times more likely to be promoted to the partner level, and at the current rate of progress, gender parity is not expected for equity partners until 2181. Partner status aside, surveyed female lawyers were about six times more likely to report being bypassed for promotion, denied a higher salary, and not having access to career development opportunities. Many women also reported being treated as token diversity hires, and being taken less seriously than many of their male coworkers.

#### “2022 Diversity Report Card” – California State Bar

Women make up 42% of all attorneys at California firms but only 30% of partners and shareholders. The disparity between white men and women of color is especially noticable; white men comprise 42% of law firm attorneys but 55% of partners and shareholders, compared to 16% and 9% accordingly for women of color. White women face a much smaller gap (26% and 22% accordingly), and there is no significant difference for men of color. In general, men are significantly more likely to be equity partners and dominate positions that have hiring and promotional powers, feeding into women’s continual inability to rise in the ranks at their firms due to implicit bias.

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## II. The Four Dimensions of Gender Diversity

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### 2. Promotion

#### “The 2019 General Counsel Landscape” – LawGeex & Association of Corporate Counsel

The Association of Corporate Counsel reported that while more women were hired as general counsels within the Fortune 500 in 2018 than in previous years (making up 43% of available general counsel positions), women were also more likely to become general counsel by external hiring than by promotion. Although 42% of Fortune 500 general counsel positions were filled through promotions, women received only slightly more than one in five of these promotions. This disparity highlights the imbalance in business law specifically, a sector that has long been dominated by men.

#### “2021 Survey on Retention and Promotion of Women in Law Firms” – NAWL

Women’s representation decreases at each stage of promotion, with women making up 50% of law firm associates but only about 22% of equity partners. This is not for lack of talent; even with matching credentials, women are only half as likely as their male counterparts to receive a promotion and face high levels of bias throughout the promotional process. By focusing solely and shifting hiring/promotional committees to be more diverse, firms may begin to make progress on this front.

## II. The Four Dimensions of Gender Diversity

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### 3. Attrition

#### “In Their Own Words” – The American Bar Association

Women are twice as likely to leave the legal profession early, even after being promoted to partner. In fact, women who quit the law often exit at the peak of their careers, when they have the most ability to make positive change for younger female employees. These younger women are often disenchanted by the loss of their mentors and are thus more likely to exit early themselves. High attrition rates may be attributed to a variety of factors, particularly misogynistic and racist behavior in the workplace and the increasingly difficult task of maintaining a healthy work-life balance as more and more billable hours are expected from attorneys working at firms. Not only does attrition hurt women's representation at high ranks in the legal field, it has a negative impact on firms and client relations and firms should work to address the aspects of their workplace culture that fuel attrition and adjust accordingly.

#### “Transforming Women's Leadership in the Law” – McKinsey & Company Acritas & Thomson Reuters

Women are more likely than men to leave their firms before obtaining partner status, and fewer women apply for partnership positions even when they match the qualifications. This report suggests this may be due to high work demands (including long hours and lack of flexibility) that clash with responsibilities outside of work. Such hours often have a larger impact on women, as they are often placed with more childcare responsibilities than men. These double expectations of high commitment both at home and the workplace may make the demands of being partner feel unfeasible for many women.

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## II. The Four Dimensions of Gender Diversity

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### 3. Attrition

#### “2021 Survey on Retention and Promotion of Women in Law Firms” – NAWL

This survey reports continued high levels of attrition among women in the legal profession, contributing significantly to underrepresentation in high ranking positions compared to the associate level and graduation rates. Scholarship suggests that high attrition rates are affiliated with the “motherhood penalty,” and are largely due to a lack of resources for women attempting to work and take care of young children. It also points to the disproportionate expectations placed on mothers during childcare as opposed to fathers.

#### “Walking Out The Door” – ABA

87% of men report being satisfied with their job in the legal profession and only 5% report being extremely or somewhat dissatisfied. On the other hand only 72% of women report being satisfied with their work and a whopping 21% report dissatisfaction. Particular grievances include recognition, pay, advancement opportunities, firm leadership, and lack of workplace diversity. Specifically, men, women, and nonbinary attorneys overwhelmingly agreed that their firm’s leadership was not being held accountable for promoting diversity and did not appear to have know how to run a diverse workplace. The report suggests that womens’ decisions to leave their firms ultimately come down to a lack of satisfaction with the work being given, feeling undervalued, and/or the inability to manage a sustainable work-life balance. Until these issues are addressed, lower rates of attrition at law firms seem extremely unlikely.

## II. The Four Dimensions of Gender Diversity

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### 4. External Hiring

#### “Women in law firms” – McKinsey & Company

McKinsey’s “Women in law firms” finds that there is greater gender disparity at the partner level than at the associate level in law firms. For associates, external hiring rates are almost equal for men and women. However, at the non-equity partner and counsel levels, men are two times more likely than women to be hired externally, and at the equity partner level men are three times more likely to be hired. The report also notes that the pool of women eligible to be equity partners is fairly small, so the lack of representation in high level external hiring may be largely due to the attrition rates and promotional biases discussed previously.

#### “Transforming Women’s Leadership in the Law” – Acritas & Thomson Reuters

This 2019 report suggests that gender inequities in external hiring may have to do with the wording of job postings. Only 49% of analyzed firms used gender neutral wording in job descriptions over the span of three years. Only 22% used gender neutral wording within the 1-3 years before the report was written, and only 11% did so in the year building up to publication.

#### “Big Law Turning to Women Lateral Hires to Boost Diversity” – Bloomberg Law

Meghan Tribe of Bloomberg Law suggests that women are less common as lateral hires for a variety of reasons, primarily work-life balance to loyalty to their firms. For women, switching law firms means reproving themselves and “[giving] up a certain amount of sweat equity.” Women are under higher pressure to build up an impressive business portfolio, as standards for female lateral hires are especially high.



### III. Gender Pay Gap

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#### “2021 Survey on Retention and Promotion of Women in Law Firms” – NAWL

This report reveals that a gender pay gap continues to persist at all levels within law firms. Women are paid less than men at entry level, and the gaps only grow as attorneys advance. In fact, the widest pay gaps appear between equity partners, with female partners making only 78 cents to a man's dollar in 2020. This figure represents a significant decrease in pay parity from previous years, falling from a peak of 94 cents in 2016. This decline in equitable pay may be related to salary cuts and the financial struggles faced by firms in the face of the COVID-19 pandemic.

#### “In Their Own Words” – American Bar Association

This report reinforces claims of a gender pay gap, noting that women consistently make less in the legal field. Top earners at firms are disproportionately male. 93% of firms reported that their most highly paid partner was a man and that no more than one of their ten most highly paid employees were women. Even looking away from the top bracket, pay disparities are significant and increase the longer a woman stays in the field. After two to three years of work, women were making about 5% less than their male counterparts. By six years, this figure increases to 13% and after over a decade of practice the gap shifts up even higher to a 20% pay disparity.

## IV. Benefits of Women in Business Law

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### DIVERSITY APPEALS TO CLIENTS

#### “Big Law Turning to Women Lateral Hires to Boost Diversity” – Bloomberg Law

As the name suggests, this article points to the promising fact that law firms are taking on more women as lateral hires to increase diversity. From 2010 to 2015, the percentage of women hired at Am Law 100 firms increased by approximately 6.7%. This increase in the hiring of female attorneys is largely linked to client demands. Clients are attracted to more diverse teams and choose firms accordingly.

#### “In Their Own Words” – ABA

When experienced female lawyers leave, it hurts firms. Relationships with clients can be severely damaged if the attorney with whom they are most involved and invested exits. Higher diversity indicates higher retention, providing more stability for clients. Additionally, many clients seek diverse legal teams with the goal of drawing from a talent pool with a wider range of knowledge and backgrounds in order to get the best legal advice they can.

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## IV. Benefits of Women in Business Law

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### DIVERSITY APPEALS TO BETTER PROBLEM-SOLVING

#### “Walking Out the Door” – American Bar Association

When surveyed, 82% of partners referenced better decision-making as a byproduct of increasing diversity in higher level positions at their firms. More diversity at higher levels leads to a wider range of backgrounds and opinions that can allow for more nuance in the decision making process.

#### “Diversity Wins: How Inclusion Matters” – McKinsey and Company

McKinsey’s 2020 report reinforces the idea that executive diversity is linked to better financial outcomes. Specifically, companies in the top quartile for gender diversity among their executives were 25% more likely to have above-average profits. In fact, the more diverse the executives, the better the performance, even among companies with relatively diverse teams. This can be linked to more thoughtful problem solving; having a team with a wider range of backgrounds creates room for more creativity and a broader set of ideas and opinions.

## V. How To Champion Greater Gender Diversity

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### “Women’s Leadership in the Law Report 2020” – Thomson Reuters

The 2020 report suggested taking advantage of COVID’s “new normal” to push forwards and implement progressive policies. Specifically, it suggested working diversity and anti-discrimination policies into the foundation of the firm and collaborating with external parties to support internal efforts. It also advised that firms hand leadership on these initiatives over to women to help avoid policies that, although well intended, may be counterproductive in practice.

### “2021 Survey on Retention and Promotion of Women in Law Firms” – NAWL

NAWL suggests:

1. Firms can look for patterns in compensation data to identify disparities, and determine annual pay based on a firm metric like average months of work.
2. Specifically articulate what determines compensation decisions.
3. Give credit to important non-billable work and shift part-time partners’ compensation to be proportional to the work they put in.
4. More fully incorporate HR professionals into the workplace in order to monitor bias.
5. Examine who gets speaking opportunities as well as origination and other credit. Establish concise policies about splitting this to account for inherent bias.

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## V. How To Champion Greater Gender Diversity

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### “In Their Own Words” – American Bar Association

The ABA recommends setting a timeline for working towards achievements, as well as incentives to stick with it. Specifically, this report suggests taking on a data driven approach to monitor important factors over time and see whether or not certain policies are helping or hurting. In order to keep women in the profession for a longer period of time, firms are encouraged to provide additional access to maternity and childcare resources, implement mandatory sexual harassment training and enforce anti-harassment policies, and expand the number of women both in partner positions and on influential committees to a “critical mass.” Through legitimate camaraderie building and culture changing efforts, firms will achieve much more than simply changing policies on paper.

### “Diversity Wins: How Inclusion Matters” – McKinsey and Company

This report highlights five areas of action that have made a significant difference at firms where they have been implemented:

1. Ensure representation. If a firm fails to represent a diverse population, they will be unable to do anything more involved.
2. Increase accountability for leaders and implement diversity and inclusion policies. By fostering an inclusive and open minded workplace culture, firms can encourage higher retention and improve job satisfaction
3. Equal opportunity: fairness and transparency. Articulating hiring, promotional, and salary decisions can have a big impact on combating implicit bias.
4. Confront microaggressions. Little things can have a significant negative impact on workplace inclusion; by addressing microaggressions, firms can foster a welcoming and growth-based workplace environment.
5. Be firm and concise in supporting diversity. If firms leave no room for employees and outsiders to question their commitment to equity and inclusion, then they are doing a good job.

## VI. Effects of COVID-19

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### “2022 Gender Parity Report” – World Economic Forum

The 2022 report points to an ongoing lag in the pursuit of gender parity as a result of the pandemic and its impacts on the labour economy at large. Unlike most recent recessions, the enduring impacts on employment due to COVID-19 have disproportionately hurt women, many of whom were forced to leave their jobs in order to provide at-home care for their relatives during the lockdown. The WEF’s Gender Gap Index shows that gender parity in the global workforce had been on the decline since 2009, but has dropped much faster in the wake of the pandemic. This year, the index published its lowest score since its founding, with gender parity in the workforce down to 62.9%.

### “2021 Survey on Retention and Promotion of Women in Law Firms” – NAWL

Over 95% of firms involved in the NAWL survey reported that they already offered remote, hybrid/flexible, and part-time options before the pandemic. Because of this pre-existing flexibility, COVID had less of an impact on law firms’ ability to operate than many other industries. However, the gender pay gap at the equity partner level increased by 10% in 2020, even after accounting for reported hours worked.

### “2022 Diversity Report Card” – California State Bar

While the number of women and people of color admitted to the California State Bar decreased during COVID, numbers rebounded in 2021, with 56% of new admittees identifying as women and 53% as people of color. Specifically, women of color made up 32% of all new admittees in 2021, a 5% increase from 2020 and 3% increase from 2019. Whether this is the result of an actual increase in women of color entering the law or simply the result of an admittance lag due to the pandemic is yet to be determined.

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