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***MOTHERS IN LAW FIRMS:
WHERE DO WE GO FROM HERE?***

***An Empirical Study Of Seattle Area Lawyers
Sponsored by MAMA Seattle***

**By Roberta D. Liebenberg and Stephanie A. Scharf
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By Roberta D. Liebenberg and Stephanie A. Scharf¹

We are pleased to present this research report about the impact of parenting on the careers of women lawyers in Seattle area law firms, and the law firm strategies that are important for retaining and advancing women with children. Sponsored by the Mother Attorneys Mentoring Association of Seattle (“MAMA Seattle”), this project was driven by the mission of MAMA Seattle: empower attorney mothers and encourage professional success while celebrating members’ roles as attorneys and mothers.

The research stems from the recognition that women lawyers have not progressed in private practice at the same rate as their male colleagues. For many years, law firms were content to offer the hope that as women entered the profession in larger and larger numbers, they would be advanced at the same rate as men. However, that hope has not been realized. Even though women comprise approximately half of all new associates, women in private practice are still much *less* likely than men to be promoted into the partnership, especially as an equity partner, or to serve in a leadership role in their firms. At the same time, women in private practice are much *more* likely to have negative experiences around work, inclusion, and belonging. The ultimate result is that disproportionately more women than men leave private practice or the practice of law altogether.

There are multiple sources of data that explain why such gender disparities continue to exist. Some reports focus on objective data about hiring, retention, promotion and leadership roles in private practice.² This firm-based approach has the benefit of presenting basic information about the status of men and women in various work settings, as well as a breakdown of major demographic groups. Those studies do not, however, measure how individual lawyers experience their workplace, or the impact of various policies on advancement at work for one group versus another. Some research reports focus on how the structure of law firms and their policies and practices can impact the goals of a diverse profession, including reports like our *Walking Out the Door*,³ *In Their Own Words*,⁴ and *Left Out and Left Behind*.⁵ But rarely, if ever, has there been a systematic study about the legal profession with a focus on women parenting that looks at the felt experiences and results of working in private firms.

This project helps to fill that gap. It assesses the impact of motherhood on legal careers for women lawyers in private practice in the Seattle area. The project relies on survey data from lawyers, with a focus on mothers and fathers living with dependent children, using individual interviews to obtain more nuanced information about private practice experiences. The data are the foundation for our conclusions about two broad issues regarding women lawyers with children: (a) the everyday experiences, concerns and impact of parenting on legal careers; and (b) the law firm strategies that are viewed to be important to advance careers for women with children in private practice.

In the following sections, we describe (1) the research design and methodology, (2) the results of the research, and (3) our recommended best practices based on the data to help effectuate change moving forward. We anticipate that the results and the report can

readily translate into a set of educational materials for use by MAMA Seattle and other organizations and legal employers.

RESEARCH DESIGN AND METHODOLOGY

Advisory Committee

MAMA Seattle created an Advisory Committee of women and men from different types of work settings. The Advisory Committee provided input to the content of the Survey questionnaire, pretested the questionnaire before it was distributed more broadly, assisted in identifying interviewees, and was generally available to confer about research issues and content as the Project evolved.

Survey Questionnaire and Sample

MAMA Seattle focused the Survey on lawyers who had current or past experience in private practice. With this focus in mind, The Red Bee Group designed a questionnaire and the techniques for fielding the questionnaire. The questionnaire identified various individual and workplace factors that were hypothesized to impact legal careers of lawyers with children. The goal was to allow meaningful comparisons between mothers, fathers, and lawyers who are not parents on key factors of equity, inclusion and advancement. Equally important, the Survey covered the types of workplace policies and practices that lawyers perceive as being important to support legal careers for mothers.

The Survey was fielded in June 2022 and directed to male and female lawyers who currently work in Seattle area law firms or who have previously worked in private practice. To field the Survey, MAMA Seattle obtained from the Washington State Bar Association a list of email addresses of members in the Seattle area who were willing to share their

email addresses.⁶ In addition, MAMA Seattle provided its own membership list to include in the Survey sample. Duplicates were eliminated before emailing a Survey invitation to each person. A link to the Survey was also published in the online King County *Bar Bulletin*. Thus, through various media, a Survey invitation was sent to all members licensed to practice law with a King County address. As shown below, over 1,000 Seattle area lawyers responded. Our Survey respondents constitute a self-selected sample of participants rather than a representative sample of all lawyers with a King County address and who work or previously worked in private practice.

The data provide opinions from individual lawyers about their experiences working in private firms, the types of policies and practices that they believe can be useful to retain and advance women with children, the extent to which the respondent mothers value a given policy or practice, and opinions about how law firms can enhance careers for women with children. The data are not specific to a given firm and instead provide the views of a large number of practicing lawyers about the experiences they have had in private practice.

Some variables were constructed based on responses to multiple questions. These included: whether a respondent was currently or previously worked in private practice; whether a respondent was a parent or a parent of dependent children.

Individual Interviews

We conducted individual interviews with eight lawyers in the Seattle area, who were recruited by MAMA Seattle. Interviewees included men and women of diverse races/ethnicities; the majority of interviewees were parents, and they worked or had worked in private practice. The interviews spanned similar topics as the questionnaire, with a focus on the experiences of women with children in law firms as compared to other

settings, and law firm policies and practices to enhance the retention and advancement of women with children. Each interview lasted for roughly one hour. Overall, interviews reinforced the Survey data, especially that mothers bear heavier burdens than fathers and have greater concerns about balancing the demands of a career with family life.

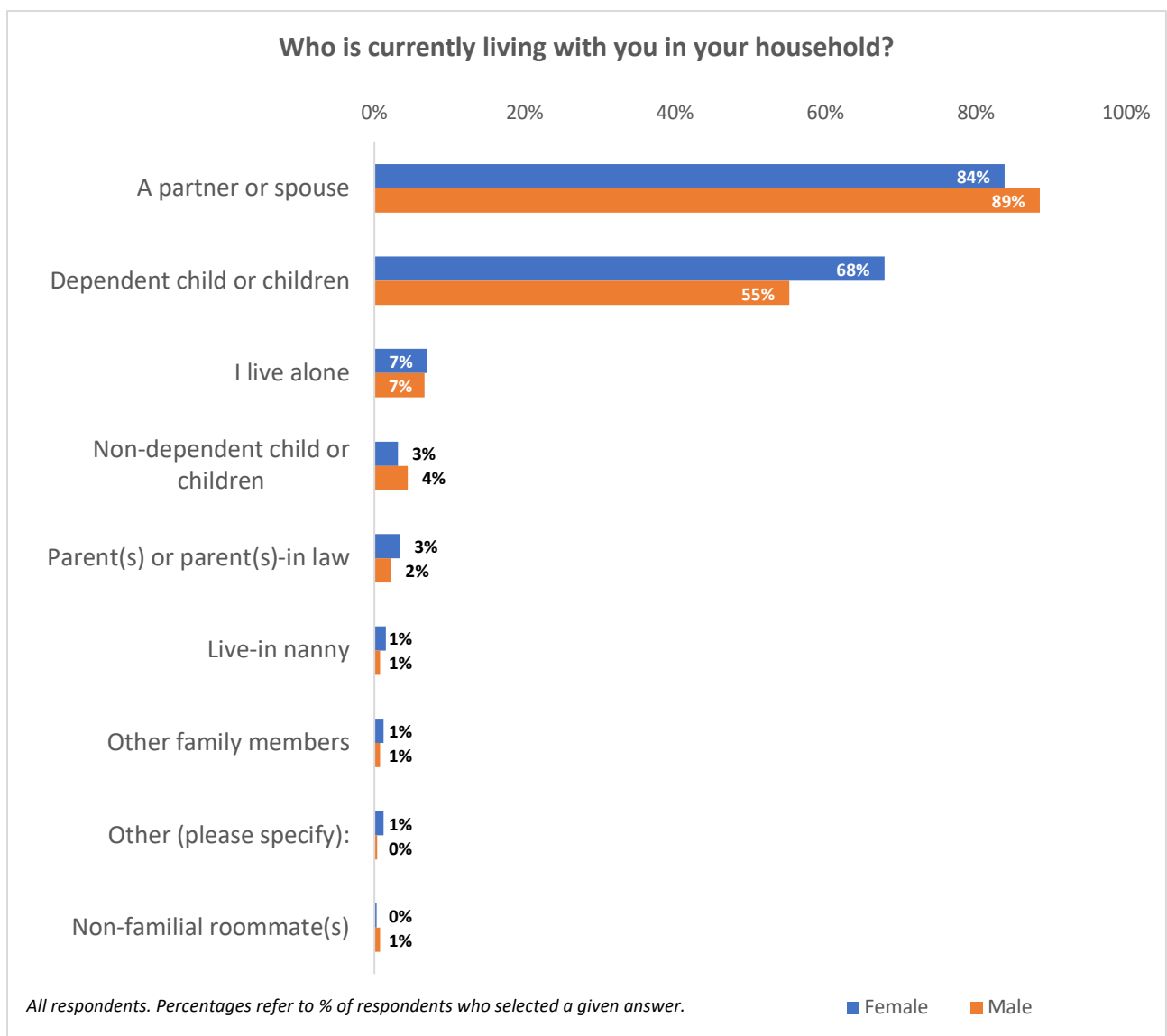
RESULTS OF THE SURVEY

Demographic Breakdown of Respondents

The Survey garnered 1020 respondents who had private practice experience.⁷ Almost two thirds of respondents (656) were currently working in private firms in an array of practice areas.⁸ Not unexpectedly, given the subject of the Survey, 73% of all respondents were female.⁹ Almost 83% of respondents were White, while the remaining 17% of respondents identified across multiple races and ethnicities: Black/African American, Hispanic/Latino/Latina, American Indian/Alaska Native, and Pacific Islander/Native Hawaiian.¹⁰ Close to 3% of respondents had a disability that required an accommodation for them to work as a lawyer. For those respondents currently in private practice, 26% were associates, 22% were counsel or non-equity partners, and 29% were equity partners (including solo practitioners).

The large majority of respondents (83%) were married or in a domestic partnership (84% of women and 89% of men). Of the other respondents, 8% were divorced, 8% were single, and the remaining 1% were widowed or separated. Importantly for the analysis, almost two thirds of respondents (64%) were living with dependent children. The large majority of respondents had children: 83% of women and 86% of men.

Consistent with family status, and as shown in the graph below, the majority of respondents did not live alone and resided with a partner or spouse (84% of women and 89% of men). A greater percentage of women lived with dependent children (68%) compared to men (55%). A small percentage of respondents—whether living with dependent children or not—also lived with non-dependent children, parents or in-laws, other family members, or other non-related people. Finally, 7% of women and men lived alone.

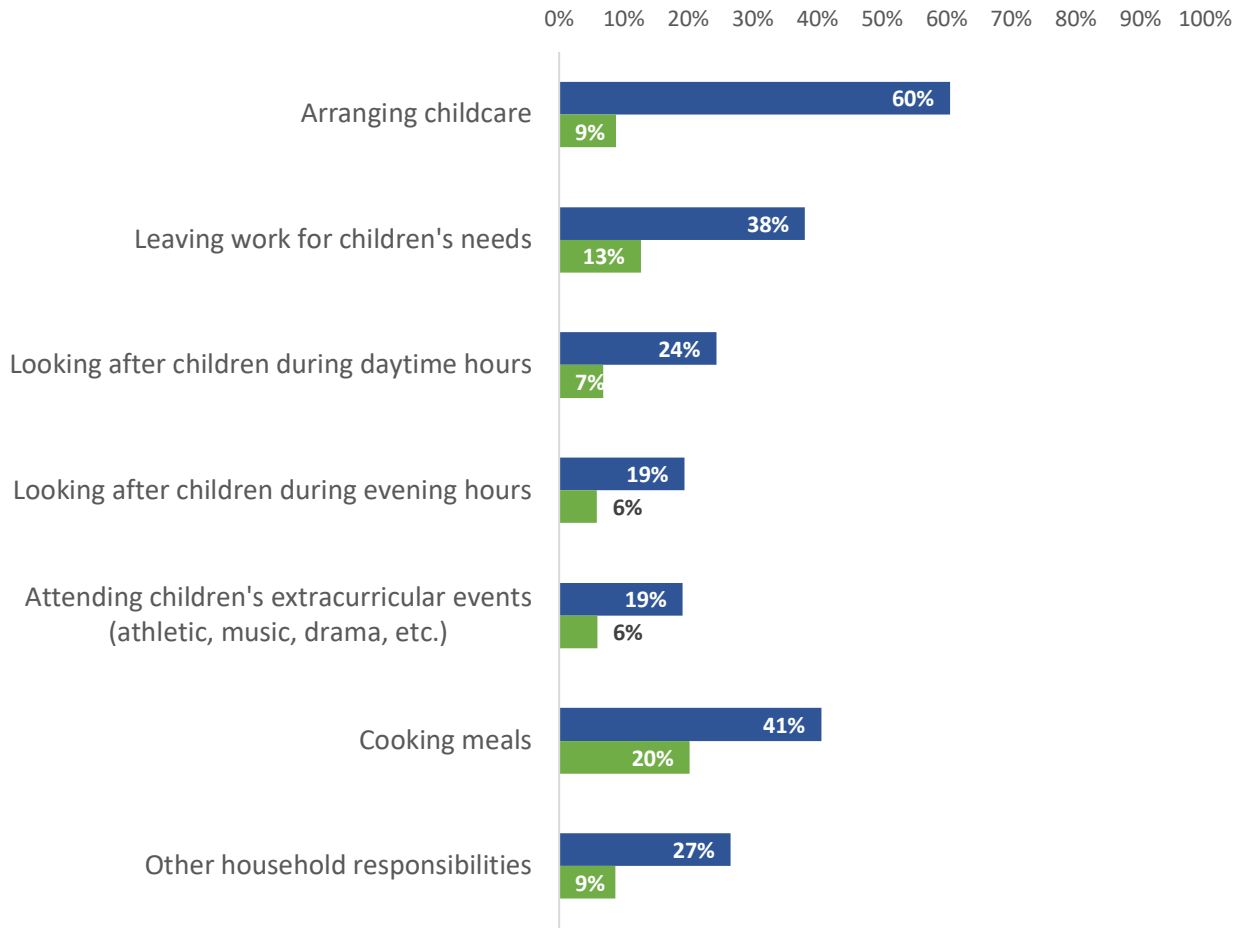


Careers and Parenting

The results show that career decisions are influenced by concerns about the impact of becoming a parent. Both men and women put off having children because of career concerns, although a significantly greater percentage of women postponed having children (30%) than men (18%), even when we controlled for the age of the respondent ($p = .01$).¹¹ Younger respondents, not surprisingly, were more likely to report having postponed children for career-related reasons than older respondents ($p < .00001$).

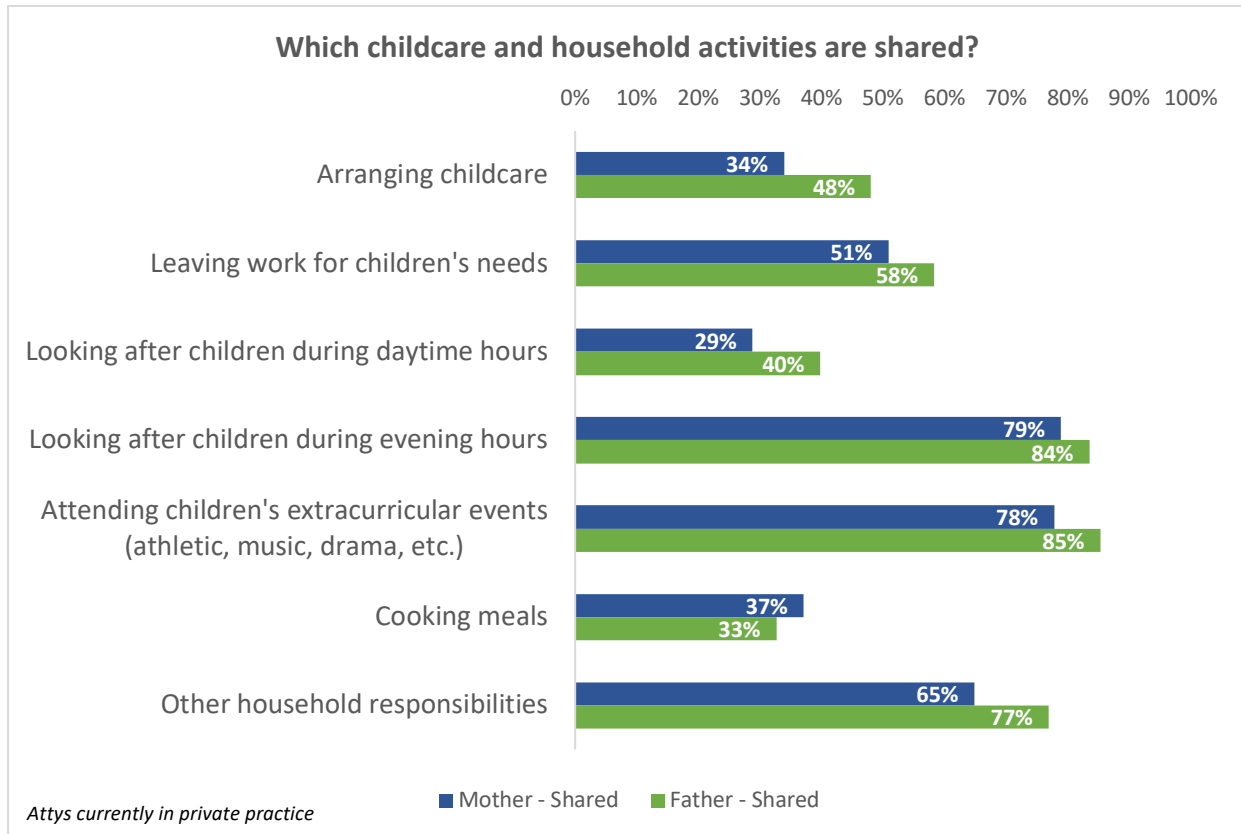
The decision to postpone children tracks the reality that having children creates a set of responsibilities outside of work which have a far greater impact on women lawyers than men. As shown below, on each aspect of childcare and household activities, mothers in private practice are far more likely to have “primary responsibility” than fathers. (Each of these differences are significant with p values that range anywhere from .003 to .000001.) While a fair number of household activities are shared between spouses/partners, it is also the case that fathers report a much greater degree of sharing than mothers report.

Who is primarily responsible for children and the household?



Attys currently in private practice

■ Mother - Solo ■ Father - Solo



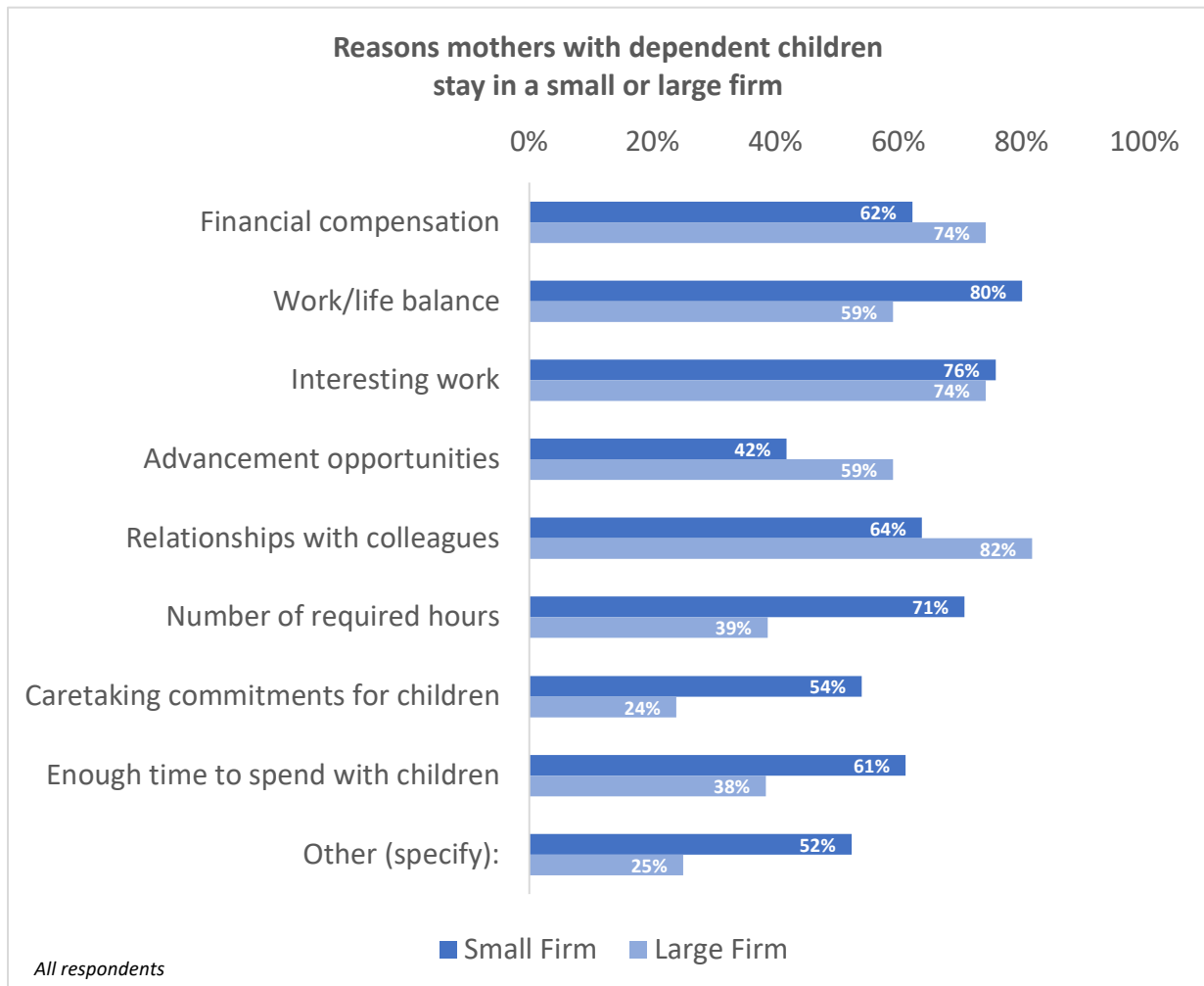
The type of “double duty” or “second shift”¹² observed here is consistent with the results in other research we have conducted.¹³

This gender gap leads to questions about how mothers with dependent children fare in private practice. To some extent, the answer depends on the size of the firm, as shown in the graph below. When we compared responses from lawyers who work or used to work in smaller firms (from 1 to 50 lawyers) with their counterparts in larger firms (over 50 lawyers), the top three reasons why mothers with dependent children stay in *larger* firms are:

- financial compensation,
- opportunities for advancement, and
- relationships with colleagues.

The top three reasons why mothers with dependent children stay in *smaller* firms are:

- work/life balance,
- interesting work, and
- number of (presumably lower) required hours.



It appears that mothers at smaller firms more highly value the balance between work and home as a reason to remain in their jobs.

That said, women are significantly more likely than men to leave private practice due to having a child ($p < .0001$). It is more likely for women to leave private practice before their first child is born (62%), compared to men (54%). As lawyers have more children, they are less likely to work in private practice ($p = .006$), and that effect is greater

for women than men ($p=.05$). These results align with other well-established data showing that private practice firms are simply not retaining women lawyers to the same extent as men.¹⁴

Based on this data, it is fair to conclude that law firm practice is too often experienced as incompatible with raising children, and women are even more likely to hold that view than men.

Negative Law Firm Experiences Around Motherhood

Private practice can place additional pressures on mothers compared to fathers, along multiple dimensions. For example, mothers working in private practice who live with dependent children are almost 5 times more likely than fathers in the same situation to experience demeaning comments at work because of their role as a parent, a difference that is significant ($p < .001$).¹⁵

	Mothers	Fathers
Experienced demeaning comments at work because of role as a parent	29%	6%

More broadly, in a private practice setting, a larger percentage of mothers compared to fathers with dependent children experience work stress and burnout on a range of indicators, as shown below. Not every indicator in and of itself showed a significant difference between the percentage of mothers and fathers who reported these experiences. However, when we created a “Stress and Burnout Index,” based on these questions, the result was that mothers of dependent children have a significantly higher mean level of stress and burnout than fathers ($p = .01$).

	Mothers of dependent child/children	Fathers of dependent child/children
Find your work is disrupted on account of family and household obligations	43%	33%
Feel disengaged from your firm/employer	21%	15%
Feel overwhelmed with all the things you have to do	67%	53%
Experience stress about work	66%	65%
Experience stress because of parenting demands	55%	48%
Feel your day never seems to end	51%	39%
Lack sleep in order to tend to family or work obligations	46%	44%
Have trouble taking time off from work	49%	43%
Think it would be better to work part time not full time	47%	23%
Think it would be better to stop working in private practice	23%	16%
Think it would be better to stop working as a lawyer	23%	18%

In a private practice setting, higher feelings of stress and burnout parallel the lack of inclusion felt more frequently by mothers than fathers of dependent children. As shown below, mothers are often, although not always, more likely to report experiences of exclusion. (Those results are consistent with the finding that more women than men, regardless of parenting status, generally have higher scores on these questions than men.)

<i>Attorneys currently in private practice</i>	Women with dependent children	Men with dependent children
Felt you were perceived as less committed to your career	55%	31%
Felt you were perceived as less competent	35%	11%
Believed that taking family leave would hurt your career	49%	39%
Believed that taking PTO or sick days to tend to family needs would hurt your career	45%	24%
Experienced a lack of access to business development opportunities	30%	15%
Experienced a lack of access to sponsors or mentors	27%	11%
Missed out on a desirable assignment	27%	19 %
Was denied/overlooked for advancement or promotional opportunities	23%	19%
Was denied a salary increase or bonus	31%	18%
Had a client request someone else handle a matter	16%	11%

Had a colleague or supervisor request someone else to handle a matter	13%	9%
Had trouble staffing your matters	32%	32%
Had colleagues advise you to stay home or put your career on hold	9%	3%
Had family ask you to stay home or put your career on hold	23%	14%
Were denied a request for a reduced workload	11%	2%

Based on these questions, we created a “Workplace Exclusion Index” focusing specifically on mothers and fathers of dependent children. The result was a significantly higher average score for mothers than fathers (average of 5.3 for mothers compared to 2.9 for fathers; $p = .00002$). In other words, a significantly higher degree of exclusion is experienced by mothers of dependent children than fathers of dependent children.

As we discuss further below, the differences around feelings of stress, burnout and exclusion underscore the importance of implementing meaningful workplace policies and practices that are inclusive and recognize the challenges faced by women with children.

We also examined how well law firms have done in their efforts to retain and advance women with children. The answer to that question depends on whom you ask. As shown below, over half of parents who practice in law firms (excluding solo practitioners) agree (at least “somewhat” or “strongly” agree) that their firm has been successful at retaining women lawyers with children and promoting women with children into the equity

partnership; promoting women with children into firm leadership positions; at implementing policies that support women with children; and providing a culture where there is good work/life balance.¹⁶ On each of these indicators, male parents have higher “agree” scores than female parents.

While encouraging, those statistics also reflect that there are a meaningful number of parents currently working in law firms, particularly mothers, who do not share that view. Thus, a substantial percentage of mothers did *not* “agree” – even “somewhat” – that their firm has been successful at retaining women lawyers with children (40%), promoting women lawyers with children into the equity partnership (43%) and into firm leadership positions (39%), has policies that support women with children (35%), and provides a culture where there is good work/life balance (35%).

	Female parents/ Agree	Male parents/ Agree	Female parents/ Not agree	Male parents/ Not agree
My firm has been successful at retaining female lawyers with children.	60%	65 %	40%	35% (203)
My firm has been successful at promoting female lawyers with children into equity partnership.	57%	64 %	43%	36%
My firm has been successful at promoting female lawyers with children into firm leadership positions.	61%	64%	39%	36%

My firm has policies that support women lawyers with children	65%	74 %	35%	26%
My firm provides a culture where there is a good balance between personal life and work	65%	68 %	35%	32%

These split views about whether a firm has been successful in retaining and advancing women with children reinforce the need for firms to assess their existing policies and the effectiveness of those policies from the perspective of women with children.

Perspectives On Strategies For Advancing And Retaining Women Lawyers With Children

There are many strategies put into place by law firms with the expectation that they will lead to greater retention and advancement of women in general and, as a correlate, of women with children. Selecting which policies to change or implement is not necessarily an easy choice. A new policy is most commonly the result of an internal process, where firm leaders settle on a strategy after some discussion with senior leadership (and hopefully both senior women and men) about (a) what might lead to effective change for retaining and advancing women, (b) what would be feasible within the context of the firm culture to implement, and (c) what would be most cost-effective.

This Survey gives an opportunity to understand the strategies that parents at all levels of private practice in the Seattle area view as “very important” for advancing and retaining women with children.¹⁷ Here is what we found.

First, there is a large consensus among parents in private practice about certain specific policies. Over 50% of both mothers and fathers practicing in law firms agree that

the following strategies are “very important” for retaining and advancing women with children:

- Paid parental leave for the birthing parent (91% of mothers and 83% of fathers)
- Ability to work flexible hours (88% of mothers and 76% of fathers)
- Comprehensive plans for sick leave and family leave (86% of mothers and 76% of fathers)
- A policy that allows remote working (78% of mothers and 67% of fathers)
- Leaders encouraging lawyers to take vacations and time off (77% of mothers and 62% of fathers)
- Paid parental leave for the non-birth parent (75% of mothers and 62% of fathers)
- Allowing part-time work (73% of mothers and 55% of fathers)
- Consistently applied written criteria for promotion to equity partnership (73% of mothers and 57% of fathers)

While there is substantial agreement among mothers and fathers that these strategies are “very important,” it is also the case that mothers are significantly *more* likely than fathers to view each strategy as “very important.” The p value for the differences between mothers and fathers on their responses about each of these strategies is always larger than .01).

Second, there is a set of additional strategies that mothers, although not fathers, view as “very important” for retaining and advancing women with children:

- Lower required billable hours/lower workload (67% of mothers)

- Consistently applied written policy that allows more than one person to share credit for client matters (67% of mothers)
- Monitoring gender metrics of women with children, such as attrition, promotion, salary, bonuses and work assignments (63% of mothers)
- Business development training for women lawyers (59% of mothers)
- Leadership management training for women lawyers (58% of mothers)
- Providing designated lactation rooms (56% of mothers)
- Emergency childcare resources (54% of mothers)
- Written policy to add more women to law firm leadership roles (51% of mothers)

The percent of mothers and fathers who view a given strategy as “very important” is significantly different, with a minimum p value of .01 associated with each strategy.

There are virtually no meaningful differences between women with and without children about the strategies that are considered to be “very important.”

Some but not all policies are especially valued by equity partners, and some even more so by women equity partners. When we focused on the views of women equity partners, we did so on the theory that their perspectives will better inform us about which practices are likely to help women lawyers advance, because their views stem from (a) their own experiences, (b) the gaps in support they felt and had to overcome, and (c) their direct observations about why the majority of women are not at the same levels in private practice as their male colleagues.

There were three strategies that a significantly higher percentage of women equity partners compared to male equity partners viewed to be “very important” for retaining and advancing women with children. These strategies were:

- Ability to work flexible hours. The difference was 87% of women equity partners versus 65% of male equity partners (p=.04).
- Monitoring gender metrics of women with children (e.g., attrition, promotion, salary, bonuses, work assignments). The difference was 57% of women equity partners versus 33% of male equity partners (p=.06).
- Mentoring or sponsorship programs for women lawyers with children. The difference was 54% of women equity partners versus 27% of male equity partners (p=.004).

These differences show that the input of women equity partners will be important when a firm turns to formulating effective policies for advancing and retaining women with children.

Status of Remote Work

As of the time of the Survey, in June 2022, the large majority of lawyers currently in private practice (78%) reported that their firms were allowing lawyers to work remotely.¹⁸ Moreover, firms offered a great deal of flexibility in when a lawyer could work remotely: over two thirds of respondents (68%) had the flexibility to work remotely at any time or could work 100% remotely if they chose to do so.

Minimum schedule for in-office work at law firms	Respondents
In office 4-5 days a week	1%
In office 2-3 days a week	25%
In office 1 day a week	5%
100% remote if I choose	29%
Flexibility for me to choose my own schedule from week to week	39%

There were no significant differences in these results by gender or whether a lawyer lives with dependent children.

The ability to work remotely is no small matter, especially for women with children. As shown above, roughly 78% of mothers view this policy as “very important.” Roughly a third of women currently in private practice (34%), with or without dependent children, reported they would leave their current firm for one that offers a greater ability to work remotely compared to only 12% of men ($p=.02$). Although the number of respondents who answered this question was small, their views presage the challenges that law firms face in balancing what individual lawyers may seek and what a firm is willing to provide.¹⁹

Remote working does not come without downsides. It can lead to not being included in key activities, not receiving the training and mentoring that in-office work can provide, feeling left out of the mainstream of the firm, not having the visibility needed to succeed and progress, and other negative effects.²⁰ The combination of remote work and the difficulties that mothers continue to have navigating their careers in private practice means that remote work can pose certain career risks for lawyers who are mothers. As we

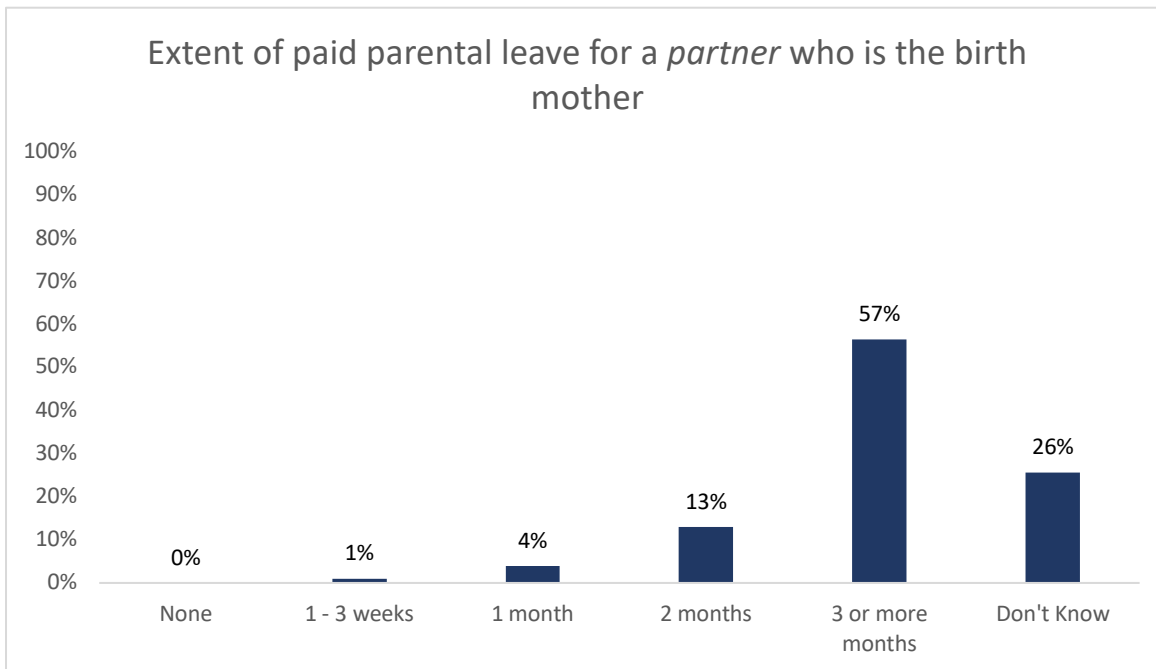
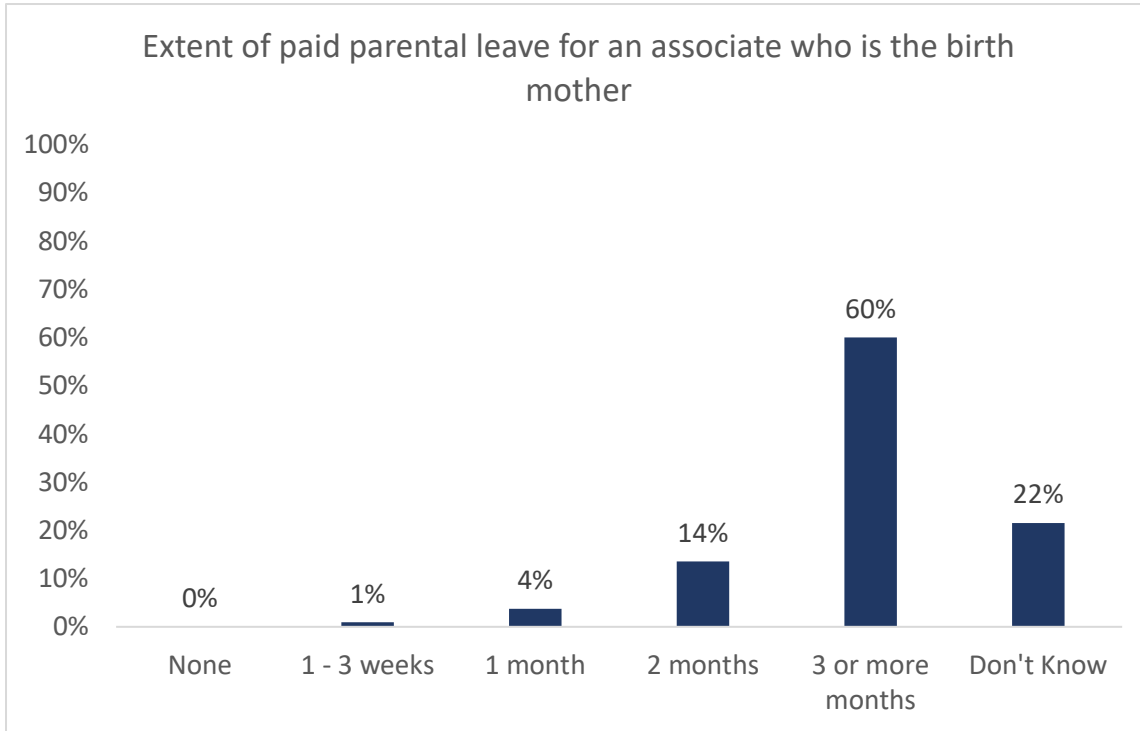
will discuss below in our Best Practices section, sustaining a culture and a cadre of well-trained and committed lawyers, while also allowing remote work, requires intentional strategies along multiple areas to address structural barriers that may adversely impact mothers with children who take advantage of remote/hybrid work schedules.

Parental Leave Policies in Seattle-Area Law Firms

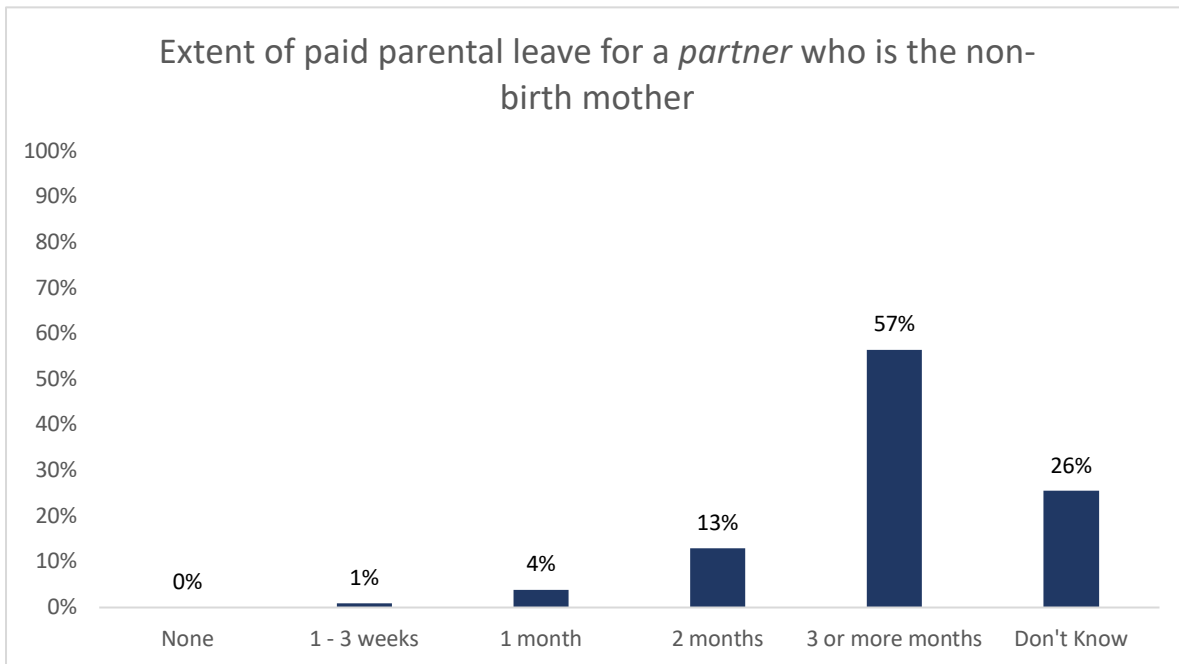
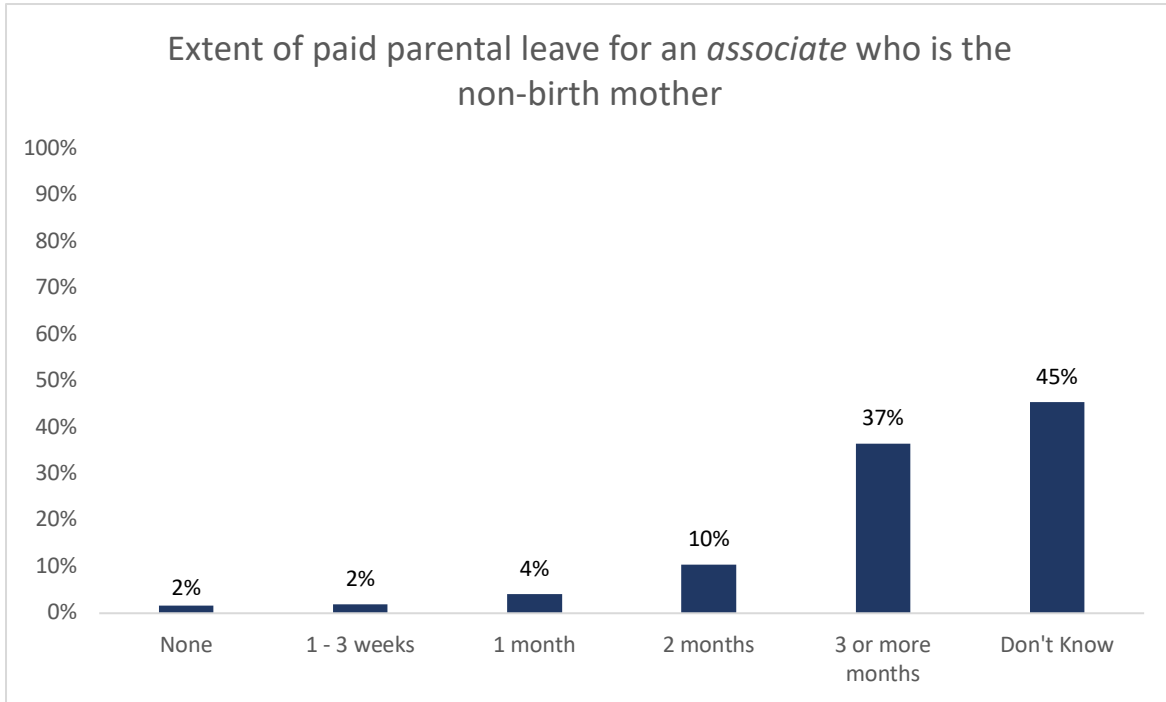
Many lawyers currently in private practice reported a policy where paid parental leave, as much as three months or more, is in effect. In the graphs below, we show the extent to which lawyers currently in Seattle-area firms report the availability of specific leave policies.²¹ Notably, a substantial minority of lawyers reported that they did not know their firm's policy. Specifically:

- Over two thirds of respondents (69%) report that their firms provide paid parental leave for associates, although 20% of respondents did not know one way or the other.
- Fewer respondents (45%) report parental leave is available in their firm for partners, with 39% responding that they do not know.

The amount of paid parental leave for the birth mother is reported by the majority of respondents to be three or more months, whether the birth mother is an associate (60%) or a partner (56%). The second most commonly reported length of time for parental leave was two months: 14% of respondents reported that time period for associate birth mothers and 13% for partner birth mothers. Only a small fraction of respondents reported parental leave for a birth mother to be less than two months. A substantial percentage of respondents (over 20%) did not know the amount of parental leave for birth mothers at either the associate or partner level.

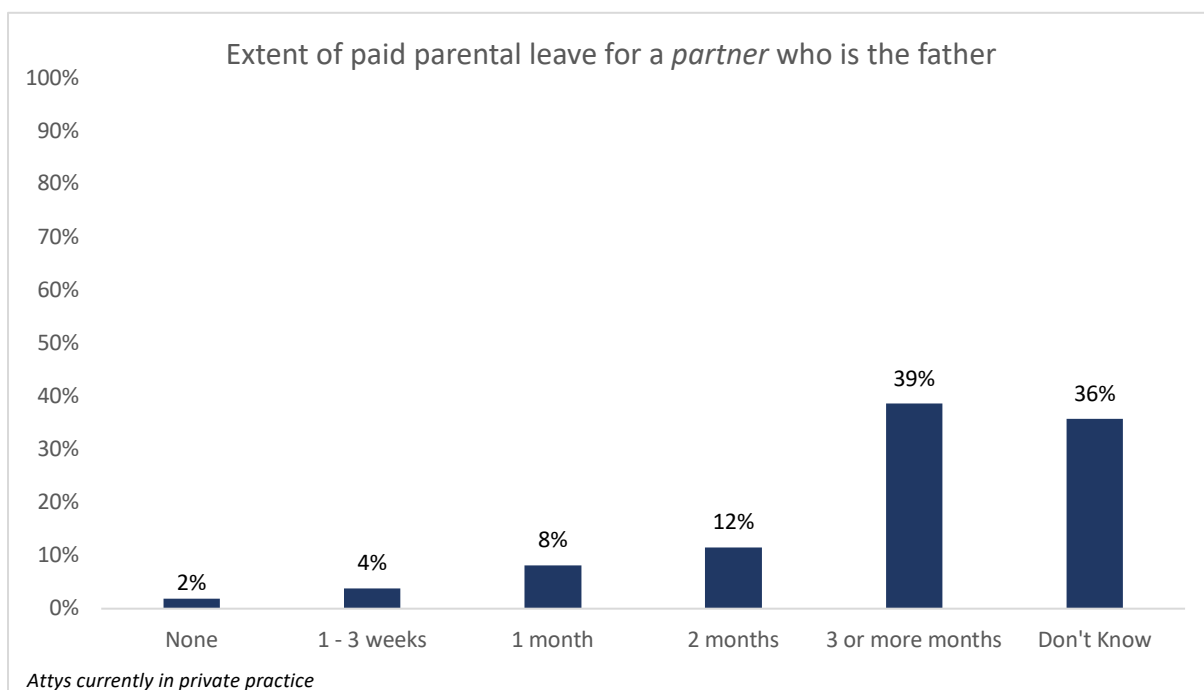


Parental leave for non-birth mothers was reported at about these same levels, again with a large minority who “Don’t know.”



Similarly, three months or more parental leave was reported as available for associate level fathers by 37% of respondents and by about the same percentage of respondents

(39%) for partner level fathers. “Don’t know” responses account for a little over one third of respondents.



We also asked lawyers currently in private practice about whether parental leave would impact an associate’s bonus or time to promotion or if it would impact a partner’s

compensation. The largest percentage of respondents answered “Don’t know” to the questions about impact on income: 40% did not know about impact on an associate’s bonus, and 41% did not know about impact on a partner’s compensation. 34% reported that parental leave does not impact an associate’s annual bonus, and 26% reported that parental leave would reduce the annual bonus. At the partner level, 38% reported no impact on annual compensation, and 22% reported annual compensation would be reduced as the result of parental leave.

Finally, the majority of respondents (53%) reported that parental leave would not impact an associate’s time for promotion to partner, and a small percentage (9%) reported that parental leave would increase the time required for promotion to partner. Once again, a substantial minority (37%) did not know either way.

In other words, even when paid parental leave is offered, some associates and partners may still face reduced compensation: for associates in the form of a reduced bonus, which is likely to be based on the fact of reduced hours; and for partners, reduced compensation, which may also be linked to reduced hours.

BEST PRACTICES FOR MOVING FORWARD

There are deeply entrenched perceptions about motherhood and the qualities of being a good mother that often come into conflict with the image of the ideal employee who has an undivided focus and 24/7 availability. This tension between competing cultural expectations has resulted in various forms of bias, where women lawyers with children have significantly more negative experiences in law firm practice than male lawyers with children. These results were reinforced by interviews with women and men

who spoke from their own personal experience and observations of others about the biases faced by women with children, including built-in assumptions that mothers are less dedicated and ambitious after having children, and are thus required to work even harder to achieve success. The interviews we had with practicing lawyers highlighted the frustrations, lack of employer support, and workplace impediments that mothers often face on an everyday basis.

Both our qualitative and quantitative data make clear that law firms have the opportunity to positively impact the hiring, retention, promotion, and compensation of women lawyers with children. To do so has a strong business basis. Law firm clients are now expressly demanding that women at all levels play meaningful roles on matters, including serving as first chairs at trial and leads on deals. Firms need a continued pipeline of experienced women lawyers to handle client matters, especially since more clients are now willing to take their business away from firms which do not meet their diversity goals. Indeed, retaining and advancing women lawyers has become more important because of the large number of women who have consistently graduated from law school and are practicing law and the cumulative consequences to firms when they cannot retain such a large array of talented lawyers.²²

Below we present a set of suggested best practices that reflect the views of Survey respondents and parallel other reports about advancing women in the law.²³ This is not to say that every recommended policy or practice is a fit for every firm. But to retain and advance women with children at substantially higher rates than occurs today requires a thoughtful and intentional approach to a firm's policies and practices, and a willingness to make change where changes are needed. There are multiple ways that firms can adapt

these suggested policies to fit their culture and also enhance the opportunity to increase the long-term retention and promotion of their women lawyers who are mothers.

The overarching goal of the suggested strategies is to create a culture where women with children can thrive in long-term careers. We note, as well, that many of the suggested best practices will also benefit men with children as they also face stereotypical biases when they deviate from expected gender norms.

1. Implement Policies Designed To Advance Careers For Mothers

We know from the data that certain policies are viewed both by men and women as very effective for advancing careers of mothers and of women generally. (*Supra* at 16-17.) Additionally, some policies are viewed even more favorably by women compared to men. (*Id.* at 17-19).

By taking advantage of the Survey results, a firm can select policies and practices that a majority of women view as “very important” for retaining and advancing women with children. When a given policy is put into place, the use of metrics will allow a firm to assess the results over time, and whether specific policy changes need to be made. Of course, as we have often written, change needs leadership at the top, a clear-cut statement of the goals, and there must be accountability for the failure to achieve the goals.

2. Implement Policies That Support Workplace Flexibility

The Survey shows that 68% of respondents are allowed to work remotely all of the time or have the flexibility to choose their own schedule from week to week. Not surprisingly, women lawyers are significantly more likely than men to leave their firms for one that offers a greater ability to work remotely (*supra* at 20).²⁴ Both mothers and fathers viewed remote work as a very important strategy for retaining and advancing mothers in private practice.

Remote work offers the ability for all lawyers, especially women with children, to balance work and family obligations. Therefore, it will be particularly critical for law firms to put in place hybrid and remote work policies that ensure that all participating lawyers, including women with children, are not disadvantaged in terms of their assignments, compensation, mentorship, and advancement. Metrics should be put in place to track how often lawyers are taking advantage of remote work policies and how they are faring in terms of their career development.

In order to increase the retention of women lawyers with children, law firms need to think creatively about improving their flex-time and part-time work arrangements and putting in place policies that eliminate the stigma that has previously been attached to such non-standard work arrangements. As shown above, the majority of both mothers and fathers said the ability to work flexible hours is “very important” to retain and advance women lawyers with children.

The importance of changing the culture around flexible work arrangements was emphasized by interviewees, including one who observed that “part-time and flex-time schedules often become . . . where women get stuck, and that such arrangements rarely enable participants to advance.”

This sentiment is buttressed by the fact that long before the pandemic, almost every law firm had implemented some type of part-time or flex-time policy, but only 6-7% of lawyers had availed themselves of those policies. The overwhelming majority of those who worked part-time or remotely were women with young children.²⁵

Hybrid and flex-time policies have not been successful in the past because women correctly believed that their use would lead to a perception that they lack dedication and commitment; result in more negative evaluations; and mean fewer opportunities to work

on major matters for important clients, all of which are critical to success and advancement to partnership. In fact, in the 2008-2009 economic recession, the first lawyers laid off were part-time lawyers, the overwhelming majority of whom were women.²⁶

Hopefully, the pandemic has de-stigmatized working from home and has brought about a greater understanding that flexible work policies better enable women lawyers, particularly those with children, to accommodate work and family responsibilities. In fact, as shown by our data, for many working mothers, having flexibility in their work schedules is of primary importance, and removing the stigma around flexible work will help to retain and advance women lawyers with children.

None of these policies, of course, should be reserved only for women. In today's world, we believe that many men would welcome the opportunity for flexible work if they, too, were confident that there would be no adverse impact as a result of taking advantage of those policies. Like women, men often also face backlash when they work on a hybrid or flex-time basis, and consequently they can suffer in both their performance evaluations and compensation. As interviewees emphasized, firms need to trust and allow lawyers to work wherever they chose to work and can be the most productive.

In order to avoid attrition, firms must ensure that, unlike the situation before the pandemic, those who avail themselves of hybrid and flex-time policies are treated no differently from those who work in the office full-time.

3. Encourage All Parents to Take Paid Parental Leave

The majority of mothers and fathers view paid parental leave for the birthing parent and the non-birthing parent as “very important” to retain and advance women with children (*supra* at 17). The survey responses show that mothers feel even more

strongly than fathers about these policies. In interviews, there was a recurring concern that “very few men took the full amount of allowed parental leave, even when urged by law firm leaders to do so.” This is noteworthy given that many Survey respondents work at firms that provide three or more months of parental leave regardless of parental gender.

An important best practice is to change the culture around parental leave to encourage men to take full advantage of the benefits offered. Interestingly, men are often stigmatized if they act counter to cultural gender norms and take the full parental leave to which they are entitled. Law firm leaders should encourage all lawyers to take allotted parental leave. It is also critical that firms take steps to ensure that lawyers, male or female, who take advantage of parental leave are not penalized in their compensation, bonuses, or partnership determinations.

4. Provide Greater Parental Resources and Support and Promote a Parent-Friendly Firm Culture

Strategies that promote a culture of support around childcare needs are important to retaining and advancing women with children. More than 50% of mothers identify designated lactation rooms and emergency childcare resources as “very important” strategies. A large percentage of both mothers and fathers also identified comprehensive plans for sick leave and family leave to be “very important” strategies.

There are an array of other policies that could be considered. Some firms have stepped up to provide tutoring support; stipends or bonuses to help defray childcare costs; and elder care benefits. Firms should also consider providing additional months of paid parental leave which can be taken flexibly to cover childcare gaps or add more personal time off. Efforts at implementing creative and responsive policies around family

needs will pay dividends in many ways: attracting and retaining working mothers, and enhancing the reputation of the firm as a leader in gender diversity.

In hosting firm-wide social events, some events should be planned that are explicitly family-friendly. Firm retreats and similar multi-day events could be scheduled to facilitate participation and avoid disruption for working parents. As interviewees observed, “Holding dinners and happy-hour events on school nights can be very difficult for mothers with young children.” Lawyers should also avoid holding meetings early in the morning, at mealtimes, or during late afternoons or evenings when parents, especially women with children, are dropping off or picking up their children at school, daycare facilities or babysitters. As many interviewees emphasized, “Given that many lawyers are working remotely, lawyers should be intentional about when in-person meetings are scheduled and seek to accommodate the need for women with children to arrange appropriate childcare.”

Firm leaders can also support a family-friendly firm culture by being transparent and letting others in the firm know when they leave work to attend a child’s sporting event, doctor’s appointment, or parent-teacher conference. By modeling this behavior, leaders demonstrate their own understanding that firm lawyers have family obligations that often have to be prioritized. This will send a strong message of encouragement to all their lawyers. Interviewees stated that taking these steps will communicate “that the firm supports you, welcomes families, and this is a place dedicated to their lawyers’ professional and personal well-being.”

Another best practice is to develop guidelines which establish reasonable boundaries around when the work day begins and ends. These policies should address after-hours meetings, phone calls, and emails, including on weekends and vacation.

Individual interviewees suggested using a tag line in email signatures to create clear work boundaries, such as, “If you are reading this email outside of your typical working hours, please feel free to respond during your regular work schedule.”

In short, policies that show support for families will demonstrate a firm’s commitment to creating a workplace culture that is inclusive of mothers, and will improve morale, engagement, and loyalty.

5. Revamp Compensation and Billable Hours Policies

To truly create a family-friendly firm culture, now is the time for firms to reconsider their approaches to their compensation criteria and billable hours models and requirements. Traditionally, the number of billable hours has been a key factor – sometimes the only factor -- in compensation. Many lawyers, especially women with young children, are under great stress to meet onerous billable hour requirements. This stands in stark contrast to corporate law departments, for example, where the focus is on efficiency, client service, creative solutions to problems, and effective collaboration and teamwork.

We note that reduced billable hours and workload are viewed as “very important” by more mothers than fathers for the retention and advancement of women with children (*supra* at 17).²⁷ Firms should consider adopting compensation models that evaluate performance on a broader basis than just billable hours. The efficiency and the quality of work are also important factors to consider. Additionally, firms may consider giving credit for “non-billable” contributions such as holding teams together, creating supportive office environments, and helping to maintain morale and organizational well-being. Other types of “office work,” which are often relegated to women,²⁸ are infrequently considered in performance evaluations, much less counted towards billable

hour requirements, or rewarded when determining compensation or bonuses. Firms should delegate this work to men and women equitably.

There can be different ways to broaden evaluation criteria for compensation beyond billable hours, although such changes will require some fresh thinking about the process of evaluating lawyers, the firm's long-term goals for gender diversity at all levels, and how best to achieve those goals.

6. Recognize and Address Implicit Biases

It is imperative that law firm leaders examine the gender stereotypes and biases against mothers and caregivers. Negative assumptions about a working mother's commitment and productivity can really derail her advancement. Strikingly, 55% of mothers reported that they were perceived as less committed to their careers than fathers. As a result of such unfounded perceptions, women with children may not be assigned to matters that may require travel or long hours, under the assumption that because of their childcare responsibilities they will not want to take on these matters. These stereotypical biases deprive women of opportunities to work on important matters for significant clients, which adversely affects their promotion and compensation.²⁹

As discussed above, it is also important to address the institutional biases and stigma around the use of remote and flexible work by women lawyers with children, which likewise can be perceived as showing less ambition and dedication to the firm and their careers. As one interviewee discussed, "Even though [lawyers who are mothers] continued to bill more, originate more matters, they were looked down on for working at home by their male counterparts." Providing anti-bias training for lawyers in the firm will enable them to recognize these unconscious biases concerning mothers and give them the tools necessary to combat it.

7. Use Metrics to Track Goals and Meaningful Changes

We cannot emphasize too strongly the importance of metrics whenever a firm implements strategies for change. Metrics are key for tracking the current status and experiences of mothers, and the only meaningful way to assess the impact of a new or altered strategy for retaining or advancing women lawyers. There is no one set of metrics that fit all workplaces, and firms should decide which types of data would improve their ability to assess the impact of policies and practices over time. Ironically, women seem significantly more aware of the importance of metrics than men: 63% of mothers reported these metrics as “very important” to retaining and advancing mothers compared to only 45% of fathers (*supra* at 18-19).

In our experience, metrics that answer these questions are especially useful:

- What is the rate of attrition of women with children?
- What percentage of women (and men, as well) who are eligible to take parental leave take the leave and for how long?
- What percentage of women and men choose not to return to the firm after taking parental leave?
- If women take parental leave, how are they being treated in terms of assignments, compensation, and partnership eligibility after they return compared to others in the firm who have not taken such leave?
- What types of assignments are being given to women with children?
- How are women with children faring in terms of compensation and promotion?
- Are women with children participating in client pitches and other business development opportunities?

- Are women with children being tasked with more non-billable activities, such as recruiting or mentoring responsibilities?

Metrics are key to inform a firm about the types of policies that need to be implemented as well as how well those policies are working. Metrics should align with the key strategic goals being set by the firm, especially with respect to how women lawyers with children are being treated.

8. Encourage Childcare Responsibilities by Men and Women Alike

In an interview with NPR, former Supreme Court Justice Ruth Bader Ginsburg once spoke about being called into her younger son's school several times to deal with his disciplinary problems. At the time, she was a law professor at Columbia University and litigating cases around the country. She told the school that she could not keep leaving her office to deal with her son. She informed the school administrators that "this child has two parents. Please alternate calls. It's his father's turn." Justice Ginsburg often attributed her success to her supportive husband and emphasized that "women will have achieved true equality when men share with them the responsibility of bringing up the next generation."

A number of interviewees offered comments similar to this, such as, "There were never times when I did not have the responsibility to be the one to pick up the kids," and "Most women lawyers with children were still the primary parent managing kids' issues."

Our data and previous research demonstrate that childcare responsibilities fall much more heavily on women than men. Indeed, before the pandemic, more than 54% of experienced women lawyers reported that they were fully responsible for arranging childcare, compared to just 1% of men.³⁰

As shown in prior research, the impact of family care obligations on women attorneys of color can be even greater as they often have more multi-generational family care responsibilities than White women and are more likely to be single parents.³¹ To help avoid an unfair imbalance in childcare responsibilities, women with children and their partners or spouses need to have frank and candid conversations to set expectations and divide responsibilities equally. For single moms, there is even greater pressure to find childcare support, whether it be from friends, relatives, or a paid nanny or babysitter.

In addition to the types of family-friendly policies discussed above, firms can also seek input from parents about how best to address the challenges they face so that resources can be allocated to assist them. Taking these steps will be key to reduce attrition, increase productivity and morale, and help in on-going recruitment efforts.

9. Develop On-Ramp Programs

All too often, when women have children they decide not to return to practicing law in order to accommodate their childcare responsibilities. These decisions are not made lightly, given that there will be a loss of income and women will be leaving a career where so much time, energy, and money has been invested. As one interviewee commented, “for many women lawyers, a career path may not be a straight line, but instead often looks more like a lattice rather than a ladder.”

Indeed, after having children, some women decide that starting their own solo practice or firm will allow them more freedom to create the type of flexible work schedule they need to balance family responsibilities and career aspirations. By doing so, they will also be better able to maintain the self-care they deem essential for their physical and mental health.

Women lawyers who have taken a break from their careers to focus on family often have a difficult time returning to a law firm. As a result, they are taking advantage of on-ramp programs that a number of firms are now starting.³² Firms are waking up to the fact there is a pool of talented and experienced women lawyers who put their careers on pause when their children were young, but who are now eager to resume practicing as their children are older and their childcare responsibilities have begun to diminish.

The development of such programs can provide a structured path for re-entry with training and networking opportunities. Firms can enhance the process by maintaining a connection with women who leave after having children and conveying a message that the “door will always be open” when they are ready to restart their career. Doing so will be a win-win for both law firms and women lawyers with children, enabling firms to tap into the considerable talent and experience of women who have taken a step back from practicing while allowing women with children to come back without being marginalized and with the ability to refocus their energies on their careers.

CONCLUSION

It is clear that without family-friendly policies and support by law firms, women lawyers with children will never be able to fully pursue their careers while simultaneously ensuring that their families’ needs are addressed. Women should not be forced to make the Hobson’s choice that Betty Friedan wrote about so many years ago: the binary choice between being a mother or fulfilling professional goals, potential and ambition. With this set of proposed best practices, hopefully we can put to rest the gender stereotypes and

biases that have adversely affected the careers of countless women lawyers with children and achieve gender equality for them both at home and in the office.

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ENDNOTES

¹ Roberta D. Liebenberg is a Principal with the Red Bee Group, LLC and Senior Partner with Fine, Kaplan and Black, R. P.C. Stephanie A. Scharf is a Co-Founding Principal of the Red Bee Group, LLC and Partner with Scharf Banks Marmor LLC.

² See <https://www.nawl.org/page/nawl-survey>;
<https://www.nalp.org/uploads/2021NALPReportonDiversity.pdf>;
<https://www.law.com/americanlawyer/2022/05/16/more-diverse-associates-hired-at-law-firms-but-partnership-leadership-remain-mainly-white-and-male/>;
<https://www.law360.com/pulse/articles/1517878/the-2022-glass-ceiling-report-women-in-law>

³ See, e.g., R. Liebenberg and S. Scharf, “Walking Out the Door: The Facts, Figures and Future of Experienced Women Lawyers in Private Practice” (American Bar Association, November 2019) (“Walking Out The Door”),

https://www.americanbar.org/groups/diversity/women/initiatives_awards/long-term-careers-for-women/walking-out-the-door/. The data contained in that report are from a collaborative research project by the American Bar Association and ALM Intelligence.

⁴ J. Sterling and L. Chanow, “In Their Own Words” (American Bar Association 2021), <https://www.americanbar.org/content/dam/aba/administrative/women/intheirownwords-f-4-19-21-final.pdf>

⁵ D. Peery, P. Brown and E. Letts, “Left Out and Left Behind” (American Bar Association 2020), <https://www.americanbar.org/content/dam/aba/administrative/women/leftoutleftbehind-int-f-web-061020-003.pdf>

⁶ Over 17,000 lawyers are located in King County. See WSBA Member Licensing Counts, 10/03/22, https://www.wsba.org/docs/default-source/licensing/membership-info-data/countdemo_20190801.pdf?sfvrsn=ae6c3ef1_134.

⁷ Respondents were coded as currently working in private practice, formerly working in private practice, or never worked in private practice based on answers to a series of questions. There was a wide range of time periods since individuals formerly in privately practice had left that setting. To minimize use of responses with memory bias or which relayed firm policies and practices that were have likely to have changed over time, for some questions we focused only on those currently in private practice. Where memory bias or change over time in how private practices operated was less likely, we pooled responses from those currently and previously in private practice.

⁸ The four largest reported practice areas were civil litigation (33%), family law (10%), corporate transactions (10%), and trusts and estate/probate/elder law (9%). These statistics reflect all respondents currently in private practice, including solo practitioners.

⁹ Only 0.4% of respondents identified as non-binary/third gender, which was not a large enough number on which to do statistical analyses.

¹⁰ 17% of respondents were attorneys of color, which is about the same percentage found by the Washington State Bar Association for Washington attorneys who reported their race/ethnicity. See https://www.wsba.org/docs/default-source/licensing/membership-info-data/countdemo_20190801.pdf?sfvrsn=ae6c3ef1_134 at p. 2.

¹¹ Throughout the report we report observed group differences, whether those differences were significant as opposed to random variation, and the level of significance, based on the appropriate statistical test for the type of data being analyzed.

¹² A. Hochschild and A. Machung. (2012). *The Second Shift: Working Families and the Revolution at Home*. Penguin Books.

¹³ *Walking Out the Door* at p. 12.

¹⁴ S. Scharf and R. Liebenberg, *Law Firm Talent Must Reflect Shifting US Demographics*, Law360 (June 16, 2021); Scharf and Liebenberg, “Practicing Law in the Pandemic and Moving Forward: Results and Best Practices from a Nationwide Survey of the Legal Profession” (April 2021) (“*Practice Forward*”),

<https://www.americanbar.org/content/dam/aba/administrative/digital-engagement/practice-forward/practice-forward-survey.pdf>

¹⁵ Data include those respondents who currently work in private practice, excluding solo practitioners.

¹⁶ Respondents were those currently in private practice, excluding solo practitioners.

¹⁷ It is our general observation through discussions and conferences across the country with women and men in firms of all sizes that policies specific to retaining women with children are overwhelmingly bundled within policies to retain and advance women in general. Some firms have begun to provide services from motherhood affinity groups although that is not a generally widespread approach.

¹⁸ The data include all lawyers currently in private practice except solo practitioners.

¹⁹ Liebenberg and Scharf, “*Where Does the Legal Profession Go From Here? Lawyers Tell Us How and Where They Want to Work*” (American Bar Association 2022),

<https://www.americanbar.org/content/dam/aba/administrative/law-practice-division/practice-forward/2022-practice-forward-report.pdf>

²⁰ *Id.*

²¹ Note that the data consist of individual reports about what a lawyer’s firm offers. The data are not a survey of firms but of individuals across many different firms.

²² S. Scharf and R. Liebenberg, “*Law Firm Talent Must Reflect Shifting US Demographics*,” Law360 (June 16, 2021).

²³ See notes 3-5, *supra*.

²⁴ R. Liebenberg and S. Scharf. “*Where Does the Legal Profession Go from Here? Lawyers Tell Us How and Where They Want to Work*,” *id.* at n. 19.

²⁵ 2018 Vault/MCCA Law Firm Diversity Report at p. 17.

²⁶ S. Scharf and B. Flom, Report of the Fifth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms (NAWL November 2010),

<https://www.nawl.org/p/cm/ld/fid=2019>.

²⁷ These results are also consistent with our prior research. For example, a survey of nearly 900 experienced women lawyers practicing 15 years or more found that 50% of them listed “billable hours requirements” as a “very important” or “somewhat important” reason why experienced women leave their firms. *Walking Out the Door* at p. 12. A subsequent survey of approximately 1800 women lawyers found that 25% of women respondents and 34% of women respondents with children reported that a lower billable hours requirement was “extremely” or “very important” to them. *Practice Forward* at p. 46.

²⁸ Williams, J. C., M Multhaup, S. Li, and R Korn. “*You Can’t Change What You Can’t See: Interrupting Racial and Gender Bias in the Legal Profession*” (American Bar Association Commission on Women in the Profession and the Minority Corporate Counsel Association, 2018).

<https://www.americanbar.org/products/ece/ebk/358942050/>

²⁹ See, e.g., Smith, D. N. “*Law Firms ‘Leading The Way’ On Parental Benefits In 2019*.” (Law 360 2020).

<https://www.law360.com/articles/1228293/law-firms-leading-the-way-on-parental-benefits-in-2019>; Williams, J. C., M Multhaup, S. Li, and R Korn (2018). “*You Can’t Change What You Can’t See: Interrupting Racial and Gender Bias in the Legal Profession*,” Ely, R. J., P. Stone, and C. Ammerman (2014); “*Rethink What You ‘Know’ About High-Achieving Women*.” *Harvard Business Review*,

<https://hbr.org/2014/12/rethink-what-you-know-about-high-achieving-women>;

Williams, J. C., “*Beyond the Glass Ceiling: The Maternal Wall as a Barrier to Gender Equality.*” 26 *Thomas Jefferson Law Review* 1 (2003).

https://repository.uchastings.edu/faculty_scholarship/806; Glick, P., and Fiske, S. T. (2001). “*An Ambivalent Alliance: Hostile and Benevolent Sexism as Complementary Justifications for Gender Inequality.*” *American Psychologist*, 56(2), 109–118.

<https://psycnet.apa.org/record/2001-00159-001>

³⁰ *Walking Out the Door* at p. 12.

³¹ *Left Out and Left Behind* at pp. 13-14 and 17-19.

³² For an example of an on-ramping program, see <https://onrampfellowship.com>.