

Diversity in Practice *equality vs. equity*

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By: Arin N. Reeves, J.D., Ph.D.

The Athens Group



Female lawyers earn about 78% of male lawyers' median salaries. (U.S. Census Bureau, 2008)

Female first year associates at law firms earned 89% of male first year associates' median salaries. (NALP, 2008)

Female capital partners at law firms earned, on average, \$87,000 less than male capital partners. (NAWL, 2008)

The barrage of statistics released in 2008 on pay differentials between female and male lawyers has reinvigorated the discussion on the progress of women in the legal profession. Legal blogs are still buzzing with commentaries on whether the pay differentials are caused by employer bias or women's personal choices. Are women getting paid unequally for doing the same work or are women choosing to work in ways that pay less? Those who argue the former call for an examination and correction of compensation policies. Those who argue the latter celebrate the expansion of choices that women now have to structure their careers in ways that make sense to them.

In sorting through the above and other arguments in this complex dialogue, I noticed that many people have begun to use the terms "equality" and "equity" interchangeably in discussing compensation. On one blog, a woman asserted that "without pay equity in law firms, it is no surprise that women leave in droves." A male partner from a law firm commented in response that he "was sure that [his firm] treated and paid everyone equally for the work that they did." The "debate" continued without either of the bloggers realizing that they were not, in fact, contradicting each other's perspectives. They were actually talking about two separate things.

By definition, a workplace can treat men and women both equally and inequitably.

In reality, many often do.

To fully understand gender differentials in pay, we need to examine both pay equality and pay equity, but first, we have to distinguish one from the other. A law professor once explained the difference between equality and equity to me this way: equality is giving every person a car; equity is making sure that every person has driving lessons, a car filled with gas and a key to actually drive that car. Compensation systems in legal workplaces may be treating everyone equally by objectively measuring who has driven the farthest, but if those workplaces are not ensuring that everyone has equitable access and opportunity to actually drive, equality will still lead to inequity.

Male and female first year associates start off with the same base salary. Their full annual compensation, however, is dependent on bonuses which are dependent on the hours they worked, the assignments they completed, and the evaluations they received, all of which are dependent on the relationships the associates are able to forge with partners. With abundant research from NALP, NAWL, ABA, MCCA and other entities illustrating that female associates are less likely to gain adequate access to mentoring relationships, key assignments, and fair evaluations, we can surmise that differentials in compensation for first year associates are more a result of inequity in opportunity as opposed to direct inequality in pay structures.

Similarly, the differentials in compensation for capital partners in law firms are dependent on revenue generation, leadership positions, and integration into key networks, all of which are dependent on the cumulative investment of time and resources into associates who are developed into partners. Again, the research illustrates that women are less likely than men to get the critical client contact, be invited to participate in client development efforts and be in line to inherit key firm clients. The partnership compensation process may, in fact, be objective and equal, but inequity along the way has determined who has had the opportunity and resources to drive the farthest.

When challenged to address gender inequity, legal workplaces often create reduced-hours programs and alternative career tracks to address women's needs to balance work and family. Women's participation in these efforts is often cited as the cause of compensation differentials, yet, the most recent NALP statistics on part-time positions in law firms tell us that only about 5.6% of lawyers in law firms actually work on a part-time basis. Although women participate in these programs at a much higher rate than men, many women who choose to reduce their hours eventually leave law firms because of the increased inequities they face as lawyers who are perceived to be less committed to their careers. Creating alternative roads for women without ensuring that those roads equitably lead to the same destinations does not create equity for women; in many instances, it just takes them out of the race altogether.

Diversity efforts clearly must begin with equality. In a race to see who gets the farthest down the road, we do indeed need to ensure that every driver has a car. That, however, is only the beginning. In order to achieve equitable equality, we have to also focus on ensuring that every driver is given equal access and opportunity to actually drive that car to the best of his or her potential. Without that access and opportunity, objectively measuring the distance traveled is nothing more than an exercise in inequitable equality.