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PERSPECTIVE

More women lawyers taking pay equality to court

By Gay Crosthwait Grunfeld
and Jenny Yelin

Almost 25 years after women began comprising half of law school graduating classes, women lawyers still lag far behind their male colleagues in pay, prestige and power. Nowhere is this disparity more evident than in Biglaw, where women equity partners still hover below 20 percent of their partnerships. In-house corporate legal departments are not much better, with women accounting for only 22 percent of general counsel in the Fortune 500. Overall, women lawyers earned 77 cents on the dollar of their male counterparts in 2014.

While female attorneys fare better in the public sector — approximately 30-35 percent of federal judges are women, for example — these positions are traditionally less well paid, worsening pay disparities between male and female attorneys. An equity partner at a Biglaw firm can earn seven figures, while salaries are capped at just over \$200,000 for a federal district court judge, and even less for state judges and for other public sector law jobs, which constitute a significant number of jobs occupied by lawyers.

Rarely invoked in earlier decades, litigation by women lawyers to address pay inequality is on the rise. Many lawsuits against law firms are forced into arbitration, though some are seeing the light of day in court. These lawsuits generally fall into three categories — gender discrimination, fair pay and wage and hour — all aimed at addressing disparate compensation.

First, women lawyers are filing lawsuits under Title VII of the federal Civil Rights Act of 1964 and state antidiscrimination laws such as the California Fair Employment and Housing Act. For example, a Sedgwick partner sued this year in San Francisco County Superior Court, claiming the firm denied her equal pay and promotions. Booz Allen faces a similar challenge from a former attorney in federal court (the 4th U.S. Circuit Court of Appeals recently revived the case after the district court granted summary judgment), while Drinker Biddle has been embroiled in litigation by a former associate in Los Angeles County Superior Court.

In this category, the biggest headline grabber is a class action filed in the Southern District of New York by a former partner of Chadbourne & Parke. Plaintiff Kerrie Campbell alleges that despite generating revenue in line with the highest-performing male partners, she was paid less than low performing male partners. When she complained to the all-male management team, they retaliated by writing off collections due to her and refusing to provide adequate staffing on a high value matter; they then terminated her. Campbell seeks \$100 million in damages on behalf of 26 female partners of the firm.

Second, women lawyers are filing suit under federal and state statutes requiring equal pay for equal work. For example, in June, Judge Lucy Koh of the U.S. District Court for the Northern District of California approved a class action settlement on behalf of 300 female Farmers Insurance in-house lawyers who were systematically paid less than their male counterparts with similar levels of experience. The lead plaintiff in the case discovered that her male colleague who graduated from law school the year after she did was paid nearly two times what she was. When she complained, she was punished with inferior work. The settlement includes extensive injunctive relief requiring the company to reform its pay practices in addition to damages. Such cases may become more common in California, which has just passed a new pay equity law, the Fair Pay Act, hailed as the “strictest” fair-pay law in the nation.

Third, and perhaps most surprising, lawyers are invoking federal and state laws designed to protect employees from wage and hour violations. These cases arise in the context of a long discussion of women in the law that has focused on parenting leave and part-time schedules to care for young children, often used by law firms to retain female legal talent.

Some part time and contract attorneys object to being classified as exempt from overtime laws, arguing that their work assignments are too rote to be considered the practice of law. In two recent cases in federal courts in the 2nd Circuit, contract attorneys relegated to document review for large law firms sued for overtime pay. The reported decisions have focused on whether

document review requires any independent legal judgment. These cases suggest that legal work will be exempt from overtime pay.

Women attorneys who work part-time may still seek overtime if they are not salaried. In California, at least, compensating attorneys working part-time schedules based on the number of hours they bill is illegal. California’s Industrial Welfare Commission Order No. 4-1001 regulates the wages, hours and working conditions of professionals such as lawyers. Order No. 4-2001 dictates that attorneys must be paid a set salary, even when working a reduced schedule, to qualify as employees exempt from overtime. A recent Court of Appeal case confirms this rule.

Considering that many attorneys in Biglaw trying to balance work and family maintain a part time or flexible work schedule for some part of their careers, wage and hour litigation by attorneys could become more common. Law firms and in-house counsel offices should ensure that all attorneys are paid on a salaried, not hourly basis, and provided some meaningful assignments. More generally, managing partners and general counsel seeking to avoid the new wave of lawsuits aimed at ending the legal wage gap should take a proactive stance towards women lawyers, pursuing a fair and transparent system of origination credits, maintaining a no-tolerance policy on sexist comments and “all boys” events, conducting pay audits, and promoting diversity at the highest levels of decision-making, including with respect to compensation.

Gay Crosthwait Grunfeld is a partner and **Jenny Yelin** is an associate of *Rosen Bien Galvan & Grunfeld*, where they practice complex litigation, including on behalf of attorneys.



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