

? Ask Pat

Ask Pat is a feature provided by the Committee on Women and the Profession. This is a question and answer column with a twist—"Pat" will answer questions about gender bias in the legal profession. Letters are loosely based on real events. Send comments or letters to "Ask Pat," State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860.

Dear Pat,

I am a female associate in a large firm who is not married and does not have children. The associates who do not have children are expected to pick up the slack when another lawyer has to leave or miss work due to a child care issue, not to mention maternity leave. I work additional hours and think it is only fair that I be compensated either by salary or partnership track. It's all a matter of the choices we make, and the system that rewards hard work and billable hours seems more equitable to me than a system that rewards someone equally for working less.

*Sincerely,
Future Partner*

Dear Future Partner,

Unfortunately, the current focus on "family-friendly" workplaces often leaves workers who do not have child or family obligations feeling ignored or treated as if they can, and should, work more than their family-affected counterparts. However, a fair and equitable policy to protect women from discrimination or disparate treatment if they have a child should not have a corresponding negative impact on other workers. The underlying issue is not whether workers can balance work and family but whether the American work culture permits all employees to balance work and life. The discussion that began over a decade ago about balancing work and children for women is no longer just a women's issue. Statistics indicate that Americans work far more than their European counterparts—on average 350 hours more per work year (or, nearly nine working weeks).

The real issue may not be that you are expected to take up the slack if a co-worker goes on maternity leave but that you are expected to add hours to your already work-dominated week. A solution for an employer faced with losing an employee for twelve or more weeks may be to hire a temporary replacement and incorporate transition plans into company policy for such temporary workload challenges. Although this alternative may be burdensome for some smaller firms, and may not always be possible (e.g., where it is impractical to replace an absent attorney with contract help due to the nature of the matters she handles, or due to insurmountable client confidentiality or conflicts issues), it certainly merits consideration. The length of notice a pregnant attorney is able to give her employer should alleviate some of the hardship associated with maternity leave.

The Committee on Women and the Legal Profession is conducting a survey of family leave policies. The survey will be e-mailed to all Bar members on May 15 and may also be accessed on the State Bar Web site at www.nmbar.org.

Similarly, the benefits available to employees with families (e.g., health care, child-care, flexible schedules) should be equally available to all employees. A solution offered by many firms is to give each employee a "benefit budget" and allow the employee to allocate the budget to health care, child care, memberships in sports facilities, or other traditional and nontraditional benefits.

Finally, the issue of billable hours and partnership track requirements is not likely to be easily resolved. Increasing criticism of billable hours requirements and firms' tendency to focus on the number of hours an associate works rather than quality of work, may make such systems fall out of favor. Until then, it is more likely than not that you, and other attorneys who work significant hours, will be rewarded both financially and with partnership. In spite of the characterization of such systems as gender-neutral and as a means to objectively reward associates for perceived dedication to the firm, there are inescapable gender-based effects. A billable hours based "all work, no life" path to partnership perpetuates a system founded on an outdated model. No longer is the typical associate a married man with a wife at home bearing the responsibility for raising the children. There are more than 300,000 women lawyers in the United States, yet there are still very few women partners in law firms. Nonetheless, support for the billable hours-based reward system continues.

Yes, you should be rewarded for hard work and extra effort. The argument is not against rewarding hard work but against an outdated system that fails to take into account the demographic changes of its workforce. All employees, not just women or employees with children, should have the opportunity to balance work and non-work obligations yet remain productive and valuable employees.

*Sincerely,
Pat*