



It Is Time to Mind the Gap

No, not the gap when you are exiting and entering the train. Everyone minds that gap, or the consequences can be severe and immediate. I am asking: do you mind the gender pay gap? This gap is easy to ignore because the consequences of doing so are one-sided in many ways and drawn out, felt over many years that pile into a career length or attributed to other causes.

As a threshold matter, it may be prudent to discuss whether the gender pay gap exists. Sorry to disappoint. It is this author's personal opinion that discussing whether the pay gap exists only distracts from the issue and potential solutions. For this article, and any conversation you want to have with this writer, the pay gap exists, and it widens for women of color. I have crossed the threshold and I invite you to join me here on the other side.

A commonly quoted 2019 U.S. Census Bureau statistic says that a woman earns on average \$.82 to a man's \$1.00.¹ I have heard this disparity being described as "almost non-existent" to support the conclusion that the pay gap does not matter. After all, it is only \$.18.²

But you must remember the number one rule of money — it all adds up.

So, for every \$1,000.00 he makes, she makes \$820.00. For every \$10,000.00 he makes, she makes \$8,200.00. For every \$100,000.00 he makes, she only makes \$82,000.00. If you are inclined to minimize the gap by using \$.18 as a focal point, try focusing instead on the missing \$18,000.00.

If that does not spark your concern, then consider that you probably know a working

woman. You might see one every day and even enjoy working with one. You might be married to one, you might have raised or be raising one, and you might have watched your mom work throughout your childhood. Do you think her time is only 82 percent as valuable as someone else's time? If this argument is too emotional for you, I have others.

If you are married to a woman and she is going to be underpaid for her entire ~40-year career, then your marriage and your life together is missing a lot of money. Her pay gap is your pay gap because that is how shared finances in a marriage work (even if you have separate bank accounts, less is still less). Maybe you are a woman and you do not believe you are underpaid. That is great, but this is not about being underpaid. No one is saying women are underpaid. Women are paid *less than* and it sends a resounding message that women *are less than* and are willing to *accept less than*. Nope!

This point in the discussion is when I would expect the blame-gamers to chime in to say that women choose their profession, prefer flexibility, do not work overtime, do not advocate for themselves, and for whatever reason are to blame.

Much like discussing whether the gap exists, assigning blame does not further a solution. We are here now, the problem exists, let's solve the problem.

To throwback to my nineties mentor Tupac Shakur, who raised me: maybe women didn't choose this life, maybe this life chose them.³

But to address the idea that women choose lower paying fields: I want to point out that entering male dominated fields is not a saving grace. The legal field is a fine example.



Employers, law firms included, should have recognized by now that attracting top talent and promoting diversity and inclusion and equity means having reasonable parental leave and pay equity policies in place, and not stigmatizing people who use parental leave policies.

Women lawyers' average pay is less.⁴ In 2019, an average woman associate's salary was \$191,810.00 versus \$204,082.00.⁵ If you are looking for the missing \$12,272.00, it fell into the gap and no one noticed and no one cared. If you make it to the top of the mountain and become an equity partner, good for you. You will only be donating on average \$100,000.00 a year to the gap.⁶

The pay gap is bad for America because it represents a ridiculous amount of money that is not being put into our economy. If a woman equity partner had \$100,000.00 more a year, she would probably spend or invest. The equity partner gap may be an extreme example but even a \$12,000.00 gap over a decade adds up to \$120,000.00 per woman associate on average.

In 2019, there were approximately 73-74,000,000 women aged sixteen and over in the United States labor force at any given time, representing close to half of the total U.S. labor force.⁷ The average U.S. woman's gross salary in 2019 was \$47,299.00, while men earned \$57,456.00 on average. If you assign the gap here of \$10,157.00 to the approximately 74,000,000 employed women in 2019, you can extrapolate an average loss of \$751,618,000,000 in 2019.

Are these good enough reasons to mind the gap? If not, there are others to consider. For me, the gap strikes a chord because underlying the gap is the penalty assessed to women who work and have children. This phenomenon has a fun name: The Motherhood Penalty. It is my favorite oxymoron. The Motherhood Penalty is the idea that women who temporarily leave the workforce to have children do not recover financially when they return to the workforce, and this choice to have children in-part explains the wage gap.

I think the Motherhood Penalty is especially hard for my generation because we are the little girls who were told we could do it all: mommy, career, White House — let's go!

I suspect one way women try to account for the wage gap is by delaying starting families. Modern Fertility conducted a survey where 49 percent of the people surveyed delayed having children for financial reasons, and 1 in 3 respondents cited poor parental job benefits as a factor.⁸ Three of five women surveyed wanted to wait until they reached a milestone or job title. Forty-four percent of the lawyers surveyed were willing to delay starting a family. When I was in law school, I was advised by well-meaning individuals to wait until I made partner to have children. I am super impatient though and already had three children, unbeknownst to them.

A prevailing thought is that offering paid leave policies might "fix" the wage gap. But a study analyzing California's 2004 Paid Family Leave Act concluded the Act did little to increase women's wage earnings.⁹

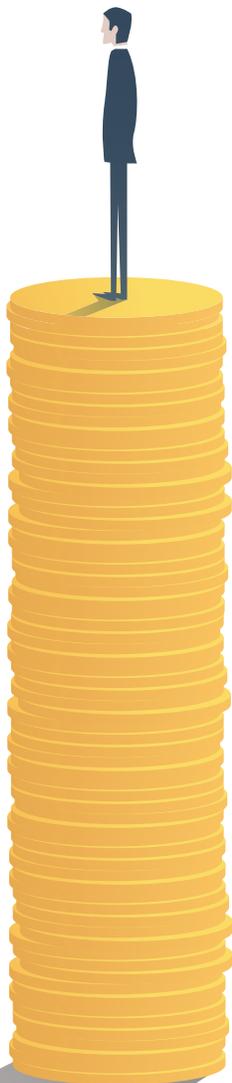
One study is not definitive and certainly not enough to halt progress towards fair parental leave policies in this country. But the study does show that these policies alone will not be enough.

There needs to be a paradigm shift in corporate culture to normalize and not stigmatize parental leave and working parents. Businesses should also implement pay equity policies. The 6th annual Bright Horizons Modern Family Index shows working parents are afraid to mention their families at work because of the stigma associated with being a working parent.¹⁰ The Bright Horizons website describe the findings as "family = fired."

The year 2020 ushered in a relentless "on-call" work culture for many. I read the Bright Horizon study and pictured a nail-biting person sitting at their desk terrified to talk about their family when suddenly their children interrupt a Zoom call. A friendly but annoying colleague says, "Wait, you're more than just a floating head on my screen? Other people exist in your life outside of work? Impossible!" The nail-biter faints as their deep dark secret is revealed! I should not laugh at the absurdity, yet I cannot help but laugh.

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EDITOR'S PERSPECTIVE

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Lawyers are uniquely positioned to affect this change in corporate culture. We draft and promote legislation, hold office, and advise employers and boards. We can put these issues on agendas make them action items.

For example, many employers are implementing or revamping diversity and inclusion programs. One way to bolster these programs and unite aligned causes is to use these programs as platforms to address non-existent or outdated parental leave and pay policies.

Look to the employers and boards you advise and inquire about these organizations' policies and if a policy does not exist, ask why not. No one is promising easy, but I bet the hard work will feel good. The pay gap is something

we should all work to overcome because it affects all of us.

If you find yourself, like I do at times, wondering how you can make a difference in a problem so deeply entrenched in our society it is almost America herself, just start the conversation and mind the gap. ⚖️

Notes:

1. Bureau, U. (2020, August 17). PINC-05. Work Experience-People 15 Years Old and Over, by Total Money Earnings, Age, Race, Hispanic Origin, Sex, and Disability Status. Retrieved April 21, 2021, from <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-05.2019.html>.
2. A 2018 Study by the Institute for Women's Policy Research investigated the gender pay gap over 15 years and determined women earn \$.49 for every manmade \$1.00. I used the lesser figure to underscore that the gap, no matter how small, is impactful.
3. An infographic showing the disparity by occupation was published by the Census Bureau. <https://www.census.gov/library/visualizations/2021/comm/womens-earnings.html>.
4. *The American Bar Association 2020 Profile of the Legal Profession* notes that about half of all law school from 2000 to 2020 graduates have been women. Despite this, the number of women in senior leadership positions at U.S. law firms is less than half. Women lawyers of color are especially underrepresented in law firm leadership. [\[istrative/news/2020/07/potlp2020.pdf\]\(https://www.americanbar.org/content/dam/aba/admininistrative/news/2020/07/potlp2020.pdf\). See also, *Left Out and Left Behind. The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color*, Destiny Peery, Paulette Brown, Eileen Letts. <https://www.americanbar.org/content/dam/aba/admininistrative/women/leftoutleftbehind-int-f-web-061020-003.pdf>.](https://www.americanbar.org/content/dam/aba/adminin-</div><div data-bbox=)

5. ABA Profiles of the Legal Profession.
6. Equity partner average compensation in 2019 was \$699,788 for women versus \$809,279.
7. There are 2.3 million women missing from the workforce when comparing February 2020 to February 2021. <https://news.gallup.com/poll/330533/working-women-fared-during-pandemic.aspx>.
8. Modern State of Fertility 2020: Career & Money.
9. *The Long-Term Effects of California's 2004 Paid Family Leave Act On Women's Careers: Evidence from U.S. Tax Data*, Martha Bailey, Tanya Byker, Elena Patel, and Shanthi Ramnath, October 23, 2019, http://www.personal.umich.edu/~baileymj/Bailey_Byker_Patel_Ramnath.pdf.
10. 6th Annual Modern Family Index, Bright Horizons, 2020 https://www.brighthorizons.com/-/media/2019_MFI.ashx.

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