

# Barriers to Advancement:

Findings from the 2020 Study of Gender & Racial Bias in Utah's Legal Profession

A REPORT FROM THE WOMEN LAWYERS OF UTAH

*As part of The Initiative on the Advancement and Retention of Women in Law*



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## **Project Summary**

This study examined barriers to the advancement and retention of women lawyers in Utah. The following report summarizes findings from a statewide survey and in-depth interviews with women lawyers and judges across the state. To analyze changes over time and compare Utah against national trends, the survey replicated the 2010 Women Lawyers of Utah (WLU) survey and the 2018 survey administered by the American Bar Association (ABA). We find evidence of substantial gender and racial bias in Utah's legal profession and minimal improvement over time on key bias indicators.

# Intro

## Study's Purpose

The purpose of this study was to identify barriers to the advancement and retention of women lawyers in the State of Utah. Ranking last in the nation in terms of women's overall professional advancement and the gender wage gap, Utah represents a unique professional landscape for women. This context has important implications for women's advancement in law, as the current study finds that in Utah women comprise 44% of law school graduates yet only 12% of law firm partners.

## Research Design

To identify the barriers limiting women's advancement in law, the current study relied on a multi-method research design that included a statewide survey and forty-seven in-depth interviews with women lawyers and judges across the state.

# Action

## 2020 Statewide Survey

The research team designed a survey using questions from two previous surveys: (1) the 2010 Utah study of women in law sponsored by the Women Lawyers of Utah and the Utah State Bar;<sup>1</sup> and (2) a 2018 national survey conducted by the American Bar Association's Commission on Women in the Profession, the Minority Corporate Counsel Association and the Center for WorkLife Law at the University of California, Hastings College of Law.<sup>2</sup>

To evaluate change over time in patterns of bias in Utah's legal profession, we replicated questions from the 2010 Utah survey, including questions about employment, workplace authority and work experience. To evaluate patterns of racial and gender bias in Utah against national trends, the survey replicated questions from the 2018 national study that focused on experiences of implicit bias.

In February 2020, the research team launched an online Qualtrics survey to all members on the Utah State Bar's listserv. A total of 2,304 respondents completed the survey before it closed in March 2020.

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<sup>1</sup>Women Lawyers of Utah (WLU). (2010). "The Utah Report: The Initiative on the Advancement and Retention of Women in Law Firms." Salt Lake City, UT: Women Lawyers of Utah.

<sup>2</sup>American Bar Association (ABA). (2018). "You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession." Washington, DC: American Bar Association and Minority Corporate Counsel Association.

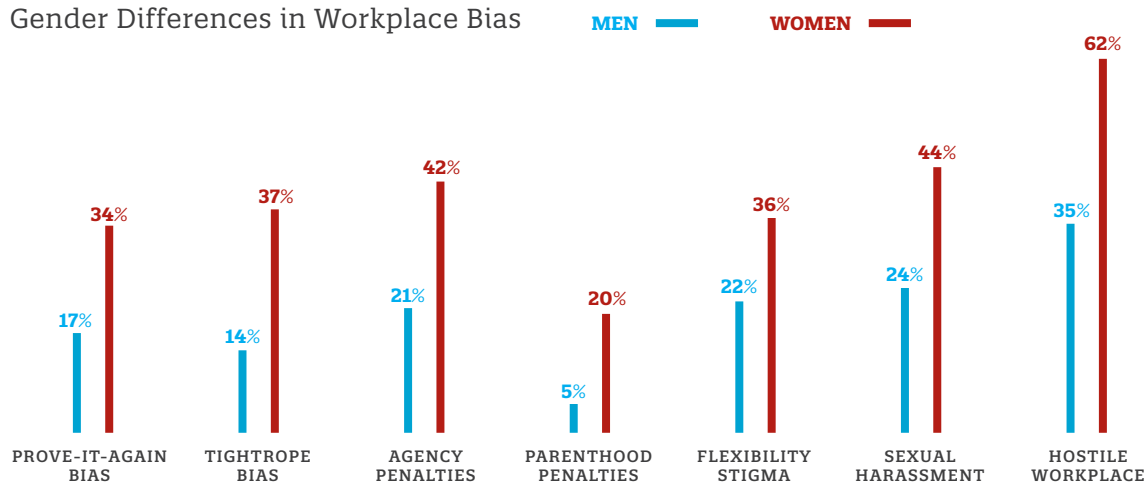
## 2020 In-Depth Interviews with Women Lawyers

The research team conducted forty-seven in-depth interviews with women lawyers and judges across the state. To elicit a broad range of experiences, we relied on multiple recruitment strategies including key informant and snowball sampling techniques. In order to recruit a diverse group of interviewees, we strategically recruited women of color, LGBTQ+ women, solo practitioners, judges and women employed outside of the Salt Lake City area. Interview questions focused on work history, career mobility and work/life balance.

### Summary of Key Findings

Consistent with national trends, we find evidence of significant bias against women lawyers in Utah. Across a range of bias types, we find that women are significantly more likely than men to experience bias, stigma, harassment and hostility in the workplace. **We find that women lawyers in Utah are particularly vulnerable to agency penalties, flexibility stigma, sexual harassment and hostile workplace experiences.**

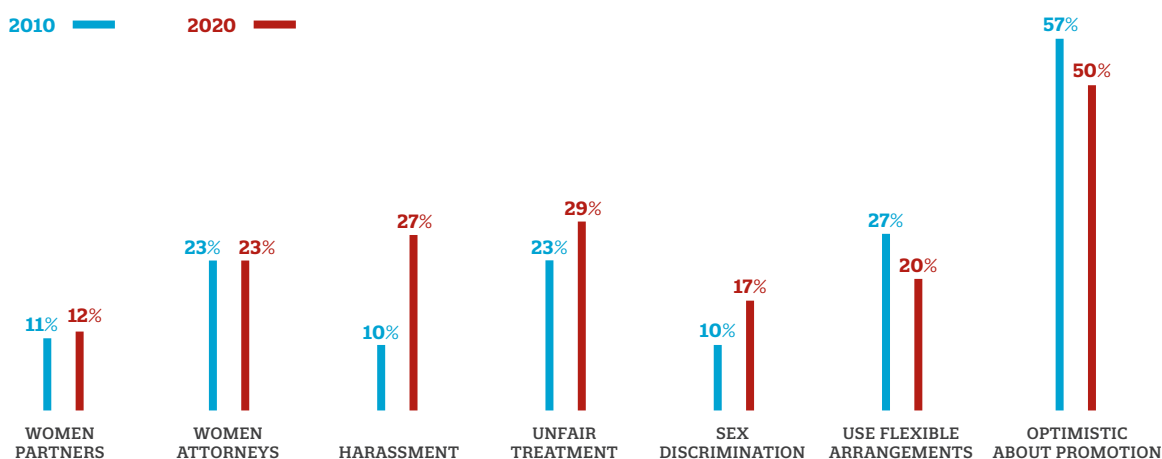
Gender Differences in Workplace Bias



Our findings also provide evidence of minimal improvement over time in the experiences of women lawyers. Women's representation in law and in partnership positions has remained static over the past decade. On several measures, including access to senior positions, harassment, unfair treatment and optimism about promotion opportunities, we see minimal change or **increases** over time in the experience of bias. While these findings may reveal greater awareness of bias and/or rising expectations for fair treatment among women lawyers, they underscore the importance of implementing equity and inclusion practices across the profession.

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## Women's Representation in Law and Women's Experience of Bias, 2010-2020



Our findings indicate four areas of progress:

- The stigma associated with use of flexible work arrangements is lower in Utah than nationally, suggesting Utah may be more family-friendly than other states.
- The gender gap in reliance on flexible work arrangements has declined over time, and in 2020 men and women were equally likely to desire alternative work schedules.
- In 2020, men and women were more likely than in 2010 to see a long-term future in their current position, indicating growing career support and stability among Utah lawyers.
- Women lawyers reported greater access to mentorship in 2020 than they did in 2010, suggesting growing support for women's careers.

## Organization of Report

This report summarizes key findings related to bias in Utah's legal profession. In the first section, we compare gender and racial bias in Utah against national trends by comparing findings from the 2020 WLU survey and the 2018 ABA survey. In the next section, we compare findings from the 2010 and 2020 WLU surveys to identify changes over time in the experience of bias. The third section reviews evidence from interviews that illustrate the types of biases experienced by women of color, LGBTQ+ lawyers and women law students as well as interviewees' ideas for reducing bias in law. We conclude the report with a detailed review of best practices for organizations and individuals with the aim of eliminating bias in hiring, retention and advancement.

A woman with dark hair tied back, wearing glasses and a dark blazer over a white collared shirt. She is looking upwards and to the right. The entire image is overlaid with a semi-transparent red filter. The text 'table of contents' is positioned in the lower half of the image.

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# Utah vs. National

## ***How does the experience of women lawyers in Utah compare to the experience of women lawyers nationally?***

In this section, we compare 2020 WLU survey findings to findings from the 2018 ABA survey. The ABA conducted a comprehensive evaluation of the experience of implicit gender and racial bias within the nation's legal community. The national survey included questions about well-documented patterns of bias across a range of workplace practices including hiring, performance evaluations, promotions and compensation.

Our survey replicated many of these questions in order to compare Utah to national trends. This comparison provides important context for understanding the experience of practitioners in Utah's legal community. We begin by providing an overview of women's representation in law Utah vs. the U.S. We then summarize the findings in five thematic areas: *Prove-it-Again and Tightrope Bias, Motherhood Penalties, Racial Bias, Compensation and Harassment*.<sup>3</sup>

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<sup>3</sup> Due to their underrepresentation in Utah's legal profession, women of color represented a small proportion of survey respondents (12%). While we present findings based on their responses, we caution against reaching conclusions based on the paucity of respondents. To address this gap, and the small number of LGBTQ+ respondents (who comprise 8% of survey respondents), we include a section of the report "Voices from the Margins" that reviews findings from interviews with women of color and LGBTQ+ lawyers.

# 1 Trends

## Overview of Women's Representation in Law in Utah vs. the Nation

Nationally, women represent half (50%) of law school graduates. In Utah, women's representation of law school graduates is dependent on law school. For the class of 2020, women comprised more than half (55%) of students enrolled the S.J. Quinney College of Law at the University of Utah but only 40% at the J. Reuben Clark Law School at BYU.

Utah trails national trends in enrollment and graduation of law students of color. While approximately a third (33%) of law graduates nationally belong to a racial or ethnic minority, in Utah that number ranges from 15% (S.J. Quinney) to 18% (J. Reuben Clark). By contrast, other states in the region and/or with similar demographic profiles also lead Utah in law school enrollment among students of color: 33% in Iowa, 21% in Idaho, 31% in Colorado, 40% in Nevada, 32% in Arizona and 55% in New Mexico. Only Wyoming and Montana are similar to Utah with 16% and 15% enrollment of students of color respectively.

## National vs. Utah Trends

	U.S.	UTAH
<b>WOMEN LAW SCHOOL GRADUATES</b>	<b>50%</b>	<b>-</b>
<b>S.J. QUINNEY COLLEGE OF LAW</b>	<b>-</b>	<b>53%</b>
<b>J. REUBEN CLARK LAW SCHOOL</b>	<b>-</b>	<b>40%</b>
<b>ENROLLMENT/GRADUATION OF STUDENTS OF COLOR</b>	<b>33%</b>	<b>-</b>
<b>S.J. QUINNEY COLLEGE OF LAW</b>	<b>-</b>	<b>15%</b>
<b>J. REUBEN CLARK LAW SCHOOL</b>	<b>-</b>	<b>18%</b>
<b>WOMEN PRACTITIONERS (OVERALL)</b>	<b>38%</b>	<b>23%</b>
<b>WOMEN PARTNERS OF LAW FIRMS</b>	<b>24%</b>	<b>12%</b>
<b>RESPONDENTS WHO REPORT NO SENIOR WOMEN IN THEIR WORKPLACE</b>		<b>61%</b>
<b>RESPONDENTS WHO REPORT LESS THAN 20% WOMEN IN THE WORKPLACE</b>		<b>40%</b>

Women are significantly underrepresented in the profession in Utah relative to the nation overall. While 38% of attorneys nationally are women, women comprise less than a quarter (23%) of practicing attorneys in Utah. The gender gap is even greater among partners of law firms. While women represent nearly a quarter (24%) of law firm partners nationally, they hold only 12% of law firm partnerships in Utah. These trends are reflected in our survey responses: 61% of respondents indicated that there are no senior women in their place of employment and over 40% of respondents indicated that their office is comprised of fewer than 20% of women.

The lack of equal representation in legal careers presents significant challenges for women's recruitment, retention and advancement. When women do not represent a critical mass, they experience token pressures that heighten their visibility, reinforce negative stereotypes and induce performance pressures.

## Prove-It-Again Bias

*Prove-It-Again Bias* refers to the necessity for women to prove themselves again and again across the career.<sup>4</sup> Due to negative gender and racial stereotypes about competence and work commitment, women and people of color are often assumed to lack the competence and commitment to sustain a successful professional career. To overcome these assumptions, women and people of color often perceive that they must go above and beyond to demonstrate their fitness and belonging.

“

*You could see that there was diversity in our firm wherever I was. I have felt like just the token.*

”

<sup>4</sup> Williams & Dempsey 2014.

Nationally, White women and women of color were significantly more likely than White men to experience Prove-It-Again Bias. Survey findings also revealed significant Prove-It-Again Bias among women attorneys in Utah. While 17% of White men reported this type of bias, over a third of White women (36%) and a quarter of men and women of color (24%) reported experiencing pressures to prove themselves time and again.

Prove-It-Again Bias often results in enhanced pressures to be flawless. Women and people of color report that any mistake will be amplified, thereby risking their reputation and career mobility.<sup>5</sup> Nationally, women reported that they are held to higher standards than their colleagues, requiring them to continually demonstrate a flawless performance. Utah survey findings reveal that a significant proportion of women (22%) felt like they can never make a mistake at work, compared to 14% of White men.

“

*Like not coming in with any kind of credibility is really detrimental, right? I think they just assume that because I am a female minority that I don't have as much weight or credibility as the other partners do, which is frustrating...I've had to work harder, longer, stronger, smarter than a lot of my White counterparts because I don't get the automatic credibility that they get just because they have a JD after their name.*

”

## Tightrope Bias & Agency Penalties

*Tightrope Bias* refers to the pressure that women face to behave in feminine ways while also demonstrating their fitness for careers that reward stereotypically masculine behaviors, including aggression, competition, self-promotion and assertiveness.<sup>6</sup> If women fail to behave in stereotypically feminine ways, they face agency penalties that censure them for violating appropriate gender norms. *Agency Penalties* refer to negative career outcomes that penalize women for engaging in behaviors typically associated with men.<sup>7</sup> However, by not behaving aggressively or assertively, women may be viewed as weak and incapable of the demands of the profession. Hence, women must walk a proverbial tightrope for colleagues to view them as gender appropriate and professionally successful. This often involves highly controlled emotional performances where women avoid displays that can confirm pernicious stereotypes about women's emotional instability.

In the national survey, women of all races experienced pressures to behave in feminine ways and faced backlash for agentic behaviors viewed as too masculine or unfeminine. In Utah, over a third of White women (38%) and a quarter of women of color (25%) reported that they get pushback when they behave assertively. Similarly, women of all races (34%) reported that when they express anger at work, their colleagues react negatively. Only 12% of men reported receiving negative reactions when they expressed anger at work. Women lawyers in Utah also reported that there is very little margin for raising concerns or complaints in the workplace. Significant numbers of White women (43%) and women of color (34%) reported that they are expected to work hard, avoid confrontation and not complain, compared to 21% of men.

<sup>5</sup> Glass & Cook 2019.

<sup>6</sup> Williams & Dempsey 2014.

<sup>7</sup> Rosette & Livingston 2012.

“

*A more senior associate who is female was talking about how in Utah, especially when you work with attorneys who are LDS and you are a woman and you are very direct, LDS male attorneys are generally not used to that....She is very direct and apparently that is getting her into a group where she is just considered bitchy and she's not sure if her prospects of becoming a partner are being diminished by the fact that her personality is being seen as not conventional for women in Utah.*

”

“

*I was never asked to go out of town because what they called my 'family situation'. I presume that's because I had a very young child though another male associate has a child six months older than mine and he was never excluded. I think they thought they were being nice. I think they thought I needed to be home because I was breastfeeding... or they thought that by not asking me to do that work they were helping me out. And the downside of that being that then I didn't get assigned as many cases and I didn't have enough work.*

”

## Motherhood Penalties

*Motherhood penalties* refer to biases that women confront after they have children. An abundance of research finds that women, particularly those in highly skilled professional occupations, face penalties ranging from loss of high-status assignments, relegation to “mommy track” schedules and a loss of wages and promotions. Bias against mothers often manifests in the form of *Flexibility Stigma*, which refers to stereotypes that workers who need flexible work arrangements are less productive and committed.<sup>8</sup> These penalties are particularly intense in professional jobs, including law, where face time is considered a proxy measure of productivity.

Nationally, women report that they experience significant motherhood penalties after having children. Research finds the impact of motherhood, however, varies by race and ethnicity due to racial stereotypes regarding the “ideal mother.” Traditional gender stereotypes view White middle-class mothers as the primary caretakers of children, while women of color are assumed to be the primary economic providers for children.<sup>9</sup> These stereotypes contribute to different expectations regarding employment: White mothers are often viewed as

secondary earners who are less committed to their careers, whereas women of color are expected to sustain employment interrupted by motherhood.

<sup>8</sup> Williams, Blair-Loy & Berdahl 2013.

<sup>9</sup> Damaske 2011; Dow 2016; Florian 2018.

These stereotypes and expectations often shape the experiences of mothers in the workplace, leading to greater wage penalties for White mothers compared to Black and Latinx mothers. In Utah, 21% of White women and 14% women of color perceived that having children negatively impacted their colleagues' perception of their career commitment and competence, compared to 5% of men.

With regard to Flexibility Stigma, over half of women lawyers nationally (57% of White women and 50% of women of color) reported that taking family leave would negatively impact their careers. Similarly, a significant proportion of men (42% of White men and 47% of men of color) also believed that taking family leave would result in negative career outcomes. In Utah, however, only 21% of White men reported that taking family leave would be detrimental to their career. Yet over a third of women (37% of White women and 33% of women of color) indicated concern that taking leave would harm their careers. It appears that Flexibility Stigma is lower in Utah than it is nationally, possibly indicating that Utah is a more family-friendly work environment generally.

## Lack of Fit Bias

*Lack of Fit Bias* refers to the tendency to view women as lacking the fit for a successful legal career.<sup>10</sup> When women and people of color enter into professions where they are underrepresented, they are confronted by stereotypes about what the “ideal” professional looks like and how the “ideal” professional behaves. When they fail to fit that ideal, they are often mistaken for lower status members of the occupation. In the case of lawyers, women and people of color are often mistaken for staff, paralegals, secretaries, law clerks or junior associates.

“  
It is incredibly difficult to be a female, especially women of color in this practice in criminal defense. I can't tell you how many times people have asked if I was the court reporter or the interpreter... When we have clients, especially like the really big high-end clients, they're not necessarily expecting a female minority to be on their legal team. And so we've had just a couple of educational situations where I just had to remind my clients that I'm not the receptionist, I'm not their waitress, that I'm a part of their legal team. And that the services that I provide isn't getting them coffee.

”

Nationally, women of color attorneys report significant experience being mistaken for lower-level and lower-status workers, including administrative staff, court personnel or janitorial staff. The Utah survey also reveals a significant lack of fit bias within Utah's legal profession. Among women attorneys in Utah, 43% have been mistaken for incumbents of lower status roles compared to only 4% of White men attorneys.

Associated with lack of fit bias is the tendency to expect women to do more menial or administrative tasks than men—referred to as “office housework.” This tendency emerges from gender stereotypes that assume

<sup>10</sup> Heilman, Manzi & Braun 2015.

women are more nurturing, communal, helpful and supportive than men. Nationally, women report bearing a greater share of the menial or administrative tasks (e.g., taking notes in a meeting) as compared to their men counterparts. In Utah, nearly a third (32%) of White women and 28% of women of color reported being asked to play an administrative role compared to only 15% of men.

## Compensation Bias

“

*Men get this deferential treatment. He's the sole breadwinner. Because I'm married and my husband has a great job, I'm supposed to be okay...I'm not supposed to be as concerned about my salary or my career as my male colleagues.*

”

There is a significant compensation gap between men and women in law. Nationally, women reported lower earnings compared to men colleagues with similar experience and seniority. In Utah, perceptions of pay inequity were less than those in the national survey. Most women (69%) and men (74%) attorneys in Utah believe that they get paid fairly as compared with others like them. However, women were more likely than men to believe that their compensation is unequal to their peers. Nearly a quarter of women (24%) compared to only 15% of men reported that their compensation is unfair relative to others like them.

Unlike the national survey, however, the Utah survey reveals important differences between in-house counsel and law firm associates. Women who hold in-house

counsel positions were more likely than women in law firms to perceive that they are paid unfairly relative to their colleagues. Among in-house counsel, 38% of White women and 30% of women of color disagreed that they are paid fairly, compared to 22% of White women and 19% of women of color who work in law firms. This difference could indicate that pay disparities are reduced by the billable hour compensation practices in law firms as compared to the salary-based compensation practices in companies.

## Gender-based & Sexual Harassment

*Harassment* refers to a range of behaviors that contribute to a hostile work environment.<sup>11</sup> These behaviors include unwanted sexual comments or advances, sexist jokes and stories, inappropriate and unwelcome personal inquiries, gender-based bullying and sexual assault.

Nationally, a quarter (25%) of women reported experiencing unwanted sexual comments, physical contact and/or romantic advances. A large percentage (70%) of all attorneys nationally reported encountering sexist comments, stories and jokes in the workplace. In Utah, the experience of harassment is even more widespread. Over half (53%) of women of color and a significant proportion (44%) of White women

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<sup>11</sup> Schultz 2018.

reported experiencing workplace harassment. Similarly, a large proportion of women lawyers reported experiencing an unpleasant or offensive work environment. In fact, 63% of White women and 51% of women of color reported that colleagues' verbal or physical behavior created a hostile work environment.

## Bias in Recruitment & Retention

Research on legal careers reveals significant gender and racial bias, from recruitment and hiring to access to leadership positions. In the national survey, White women and women of color were much more likely than White men to report bias across a range of professional opportunities and outcomes. In Utah, approximately a quarter of women (31% of White women and 27% of women of color) reported experiencing unfair treatment with regard to pay, hiring, job assignments, staff support, working relationships and promotions.

Career advancement in law is dependent on access to high-quality assignments. Nationally, women reported a lack of access to high-quality assignments as compared to White men. In Utah, men and women also reported unequal access to high quality assignments. Specifically, nearly a quarter (24%) of women lawyers reported that they have unequal access to high quality assignments compared to only 14% of men. We also observe gender differences with regard to access to advancement opportunities. Over a fifth (21%) of women reported that they have been denied well-deserved advancement opportunities and promotions, compared to only 12% of men.

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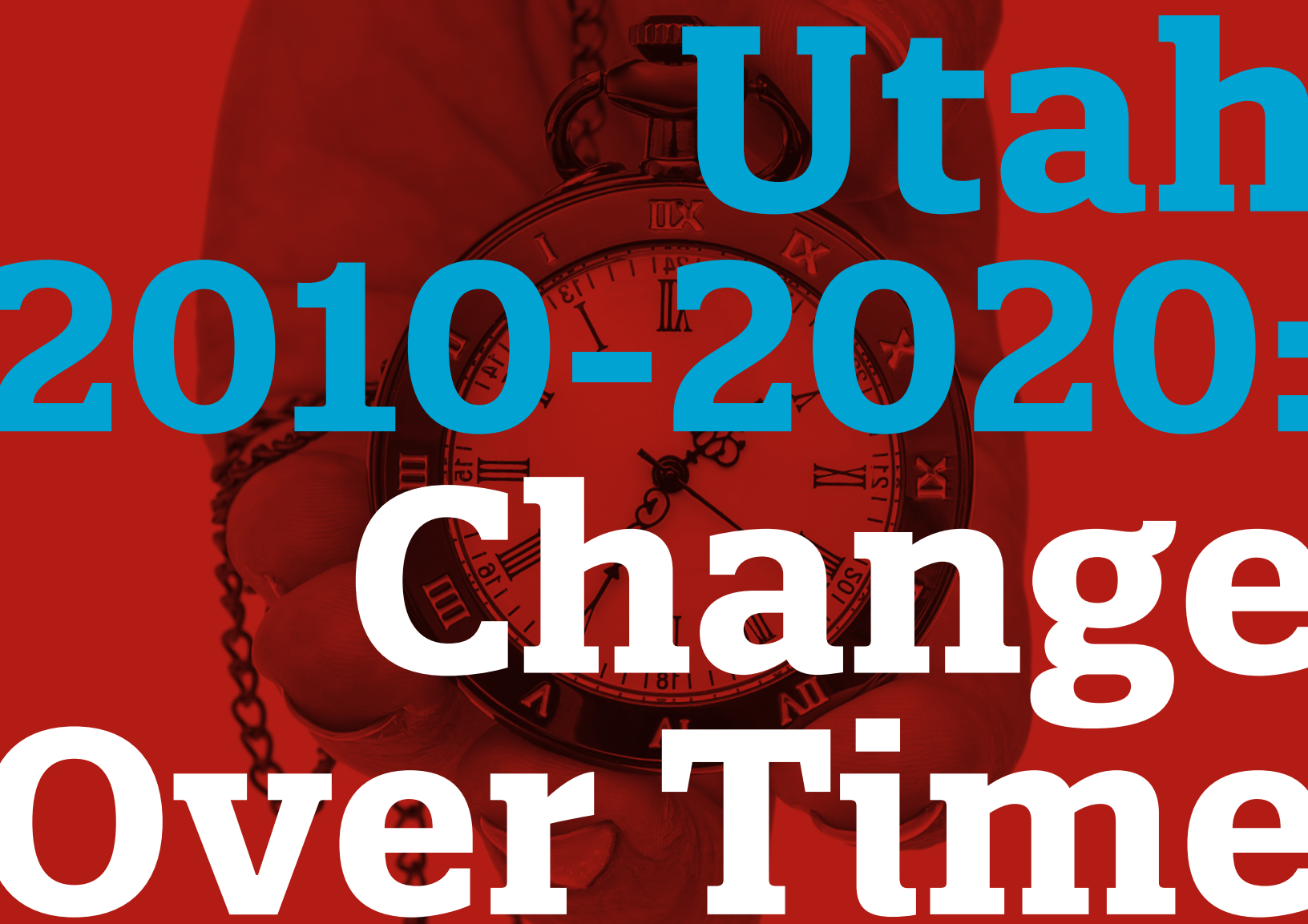
*One of the partners liked to talk about very cursorily his lack of sex life, my sex life. He would say inappropriate things. I never did anything about it because I knew he would be part of my ladder that I would be climbing. It's common.*

”

“

*I think there are a lot of firms who are on paper look to be diverse and inclusive, but then when you get to be a member of the club, you are constantly reminded that you are not really a member of the club. And it's everything from microaggressions to overt comments about your sex or your race.*

”

A hand holding a pocket watch against a red background. The watch has a gold-colored case and a black face with Roman numerals. The hand is positioned in the center, with the watch face clearly visible. The background is a solid red color.

# Utah 2010-2020: Change Over Time

## ***How has the experience of women lawyers changed over time between 2010-2020?***

In this section, we compare findings from the WLU 2010 and WLU 2020 statewide surveys to identify changes over time in the nature and degree of gender and racial bias in Utah's legal profession.

### **Overview of Women's Careers & Work Quality**

Over the past decade, women have made gains in earning law school degrees, particularly at the University of Utah where women comprise over 50% of the graduating class. However, despite these gains, women's representation in Utah's legal profession has remained relatively stagnant.

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#### Women's Representation in Law, 2010-2020

	UTAH 2010	UTAH 2020	NATIONAL 2020
% WOMEN LAW SCHOOL GRADUATES	38%	40% (BYU) 53% (U OF U)	50%
% WOMEN ATTORNEYS	23%	23%	38%
% WOMEN PARTNERS	11%*	12%	24%
% WOMEN OF COLOR PARTNERS <sup>12</sup>	<1%	1%	3%

---

Women's distribution across occupations has changed in the past decade, particularly in their representation in law firms. Women's employment in law firms increased by 11% since 2010 while men's employment in law firms remained relatively stable. Women also increased their employment in in-house counsel positions during this time, achieving parity with men in terms of their employment distribution in that area.

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<sup>12</sup> Nationally, women and people of color are underrepresented in partnership ranks even relative to their representation at lower levels. While law schools have been relatively successful at recruiting women and people of color, their representation declines at each stage of the legal career post-graduation (Gorman 2005: 2006; Gorman & Kmec 2010; Kay & Gorman 2012).

## Women's Representation by Occupation, 2010-2020\*

*\*Men's representation in parenthesis.*

	2010	2020
LAW FIRM	30% (47%)	41% (48%)
GOVERNMENT AGENCY	28% (20%)	28% (23%)
SOLO PRACTITIONER	10% (11%)	7% (13%)
IN-HOUSE COUNSEL	7% (13%)	12% (11%)
NON-LEGAL	3% (4%)	1% (2%)
OTHER	10% (5%)	3% (1%)
NON-PROFIT	4% (2%)	9% (2%)

In 2010 and 2020, 75% of women reported that they are satisfied with their current jobs. Despite relatively high levels of job satisfaction, however, a substantial proportion of women reported that they do not see a long-term future for themselves at their current employer. In 2010, 75% of women indicated that they would leave their current job within 5 years compared to 57% of men. In 2020, 23% of women and 20% of men said that they do not see a long-term future for themselves at their current job. This change over time suggests that both men and women perceive more stability in their employment over time.

In 2010 and 2020, most men and women reported being satisfied with the quality of their assignments. However, women were more likely to report that they lack the same access to quality assignments as their male colleagues. In 2010, 8% of women reported that they received assignments of lower quality than their peers, while in 2020 24% of women reported receiving lower quality assignments relative to their peers.

## Harassment

In 2010, 37% of women reported experiencing verbal or physical behavior that created an unpleasant or offensive work environment. Among those, 27% indicated that the situation became serious enough to constitute harassment. Reports of harassment have increased substantially since 2010. In 2020, 61% of women lawyers in Utah reported that they experienced verbal or physical behavior that created an unpleasant or offensive work environment. Among those, 44% reported that the situation was serious enough to constitute harassment. Overall, more than one in four women respondents (27%) reported workplace harassment in 2020, compared to 10% in 2010. By contrast, only 4% of men in 2010 and 8% in 2020 reported experiencing harassment in the workplace.

In recent years, the #MeToo movement has raised awareness of workplace harassment, highlighting the widespread impact on women's careers and the need for cultural, legal and organizational changes to eliminate it in the workplace. One impact of this movement is growing awareness of the pervasive nature of harassment among men and women. Evidence suggests that greater awareness of and discussion around harassment has clarified the definition of harassment for women, leading to greater awareness of it in

women's everyday work lives. Greater awareness has increased reporting and EEOC filings related to sexual harassment claims.<sup>13</sup> Given this context, we expect part of the increase in reports of sexual harassment between 2010 and 2020 is due to greater awareness among women attorneys in Utah about what behaviors constitute sexual harassment as well as greater confidence in identifying their experiences as harassment.

#### Experience of Workplace Harassment: % Women Attorneys Reporting Harassment

	2010	2020
IN GOVERNMENT	7%	47%
IN CORPORATE COUNSEL POSITIONS	10%	45%
IN NON-PROFIT ORGANIZATIONS	3%	33%
IN LAW FIRMS	10%	42%

## Bias & Discrimination

Women's experiences of unfair treatment have increased over the past decade. In 2010, 23% of women reported unfair treatment, while in 2020, 29% of women indicated that they have been treated unfairly at work. Experiences of bias include lack of access to high-quality assignments, receiving less support from staff and colleagues and being excluded from social networking activities.

Experiences of workplace sex discrimination have increased over time as well. Among those who experienced unfair treatment in 2010, 42% said that this treatment constituted sex discrimination. However, in 2020, 58% of women who reported unfair treatment indicated that the treatment constituted sex discrimination. Thus, while 10% of women reported discrimination in 2010, 17% of women reported experiencing sex discrimination in 2020.

In 2010 and 2020, women respondents overwhelmingly reported that discrimination was based on sex though many also indicated discrimination based on marital status, caretaker status, age, religion and disability. Overall, we observe an increase in reported experiences of sex discrimination by women lawyers in every employment type.

“

*[My colleagues] started screaming at me, very abusive. I was sitting next to a male colleague. He said, 'I have never been treated like that.' I said, I have. I'm used to it. It's common practice for women to deal with this kind of stuff...He was so appalled. He said 'literally I've never dealt with that before.' I said, it's life for women in the law.*

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<sup>13</sup> The EEOC estimates that as many as 85% of women experience harassment at some point in their careers (EEOC 2016).

“

*When work got really short and it was because of the recession, they would literally take the--we had files for each client and each patent--they would take the files from my desk or the other woman's desk, they would literally take it off our desks and give it to one of the boys....He said, 'Well you have a spouse that works so therefore you don't need to work as much as the guys who don't have spouses who work.' So you're penalizing me for being married to someone with a job?... But let's save all the billable work for the boys. That's very much how it felt.*

”

often falls to men in more senior positions. Yet in 2010 and 2020, a significant number of women and men indicated that the so-called “Pence Rule” is common and widespread in Utah’s legal profession. The “Pence Rule” refers to the preference of some men to limit contact with women colleagues outside of formal professional obligations by avoiding travel, meals or closed-door meetings with women in the workplace.<sup>14</sup> In the wake of renewed efforts to report and reduce sexual harassment, some have promoted the “Pence Rule” as a way to limit contact between men and women so as to limit any behavior that could be misunderstood as romantic or sexual in nature.

While motivated by an effort to minimize harassment or misperception, this type of gender-based distancing can contribute to stalled career advancement for women due to a lack of mentoring, reduced access to high-profile assignments such as those that require travel and exclusion from a range of informal social networking opportunities that are vital for professional success. In 2010, many women lawyers indicated that their men colleagues would not travel, go to lunch or support them through mentorship or sponsorship

## Experience of Discrimination:

### % Women Attorneys Reporting Sex Discrimination

	2010	2020
IN GOVERNMENT	11%	25%
IN CORPORATE COUNSEL POSITIONS	10%	19%
IN NON-PROFIT ORGANIZATIONS	0%	6%
IN LAW FIRMS	10%	17%

## Mentoring

Mentoring is vital for successful career mobility. In 2010, women indicated that mentoring was critical to their decision to remain at a job or leave. In 2020, 83% of women indicated that they currently have or have had a mentor that supported their career. Survey findings reveal that access to mentors is more common in 2020 than in 2010. In 2010, among respondents who did not have a mentor, 87% reported that their lack of mentorship was due to a lack of opportunity. In 2020, only 60% of those without a mentor indicated that this is due to a lack of opportunity to have a mentor.

Because of the composition of leadership ranks, the responsibility for mentoring early career women lawyers

<sup>14</sup> The ‘Pence Rule’ is named after Vice President Mike Pence who gave an interview in 2002 in which he revealed a personal and professional policy of never eating along with a woman other than his wife. This phenomenon is also referred to as the “Graham Rule” after Evangelical Billy Graham encouraged men to avoid eating, traveling or meeting alone with women other than their wives (see French 2017 for an articulation of this practice).

“

*He said I can't ride alone with you in the car. That happened lots of times when a lunch would be planned, if everybody dropped out except me, the male attorney would say yeah that doesn't look right. Men who wouldn't shut the door if I were in their office.*

”

relationships. The 2020 survey revealed that 45% of men attorneys are hesitant to travel alone with a woman colleague while 31% of men indicated that they are hesitant to have lunch with a woman colleague.

Nearly all of our interview respondents recalled incidents and experiences where such social distancing by men colleagues limited their assignments, networking efforts and career mobility.

## Parenthood

A significant challenge for professional workers is balancing the demands of a high-status career with family care responsibilities. This challenge may be particularly salient in Utah, a state that leads the nation in overall fertility rates. In 2020, most men and women lawyers had children and the majority of survey respondents indicated that they have significant childcare responsibilities. Thus, balancing work and family responsibilities is particularly salient for men and women lawyers in Utah.

Women reported significant penalties and double standards related to their roles as wives and mothers. Starting in law school, married women and mothers were accused by men peers of abandoning their children or stealing the spot of a more deserving man. Women reported hiding their marital and parental status when interviewing for jobs and being denied access to jobs, assignments and promotions following the birth of children.

“

*He said 'we were afraid you'd never come back [after giving birth] so we didn't want to pay you.' I said, what are you talking about? We've been talking about this for months. If you had questions about whether I'm coming back, you should have talked to me'....I think here in Utah it's even harder if you are a mom. You get even more scrutiny. Like why are you even working as well? You're so busy you can't always be thinking about work so therefore you're not committed.*

”

## Flexible Schedules

Professionals seek flexible or alternative schedules for a variety of reasons, including as a means of balancing work and family life. Alternative schedules can include nontraditional work schedules, telecommuting, extended workweeks, condensed workweeks, part-time work and job sharing. In 2010 and 2020, women were more likely than men to work alternative schedules irrespective of employment type. However, between 2010 and 2020, the proportion of lawyers who work flexible schedules in Utah declined slightly from 27% to 20%.

“

*Looking back I'm not sure [a reduced hour track] was the best approach to take because I took myself out, took a pay cut. And I'm doing a lot of what most people are doing for partnership anyways but not getting the credit for it...I'm treated a bit differently. My time outside of the office is respected a bit more but I am treated differently. I'm not given assignments that will help me advance.*

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In 2010, there were significant gender differences in use of alternative arrangements with 45% of women and 19% of men working alternative schedules. However, the gap diminished over time. In 2020, 52% of women and 42% of men reported working an alternative schedule. In terms of part-time work, women are more likely than men to work part-time schedules; 12% of women work part-time compared to only 7% of men.

Several women solo practitioners emphasized the benefits of flexibility of that career type. Many described the ways self-employment was ideal for balancing work and family life. However, among solo practitioners in Utah, women remain underrepresented (7%) compared to men (13%). Many of the solo practitioners explained that they face a tradeoff between greater flexibility and lower earnings. With the high student loan debt facing many law graduates, self-employment may be unequally accessible to new lawyers.

In 2020, men and women lawyers were equally likely to indicate a desire to work alternative schedules. Importantly, the environment for seeking an alternative schedule has improved slightly over time. In 2010, a majority (54%) of attorneys indicated that they would feel uncomfortable requesting an alternative schedule. By 2020, however, only 42% indicated discomfort.

Interviewees expressed concern that some alternative or reduced schedules represent a double-edged sword. Several indicated that those who take a reduced schedule risk losing out on high quality assignments, being denied partnership and facing a greater risk of being fired. Still others noted that a reduced schedule often results in a full-time workload with reduced pay and fewer benefits.

## Leadership & Compensation

Utah lags behind the nation in terms of women's representation in leadership positions. Though men and women aspire to hold leadership position at equivalent rates, men are almost twice as likely as women to hold a leadership position in Utah's legal profession. Women of color face the greatest barriers to achieving leadership positions. While 47% of men hold some type of leadership role, only 4% of women of color lawyers currently hold a leadership position in Utah.

In 2020, a majority (61%) of Utah lawyers worked in offices without any women in senior roles. Furthermore, women attorneys' confidence in their chances for promotion has declined over time. In 2010, 57% of women were optimistic about their chances of promotion. However, by 2020, only 50% of women were satisfied with their promotion opportunities. A small proportion (6%) of women in 2020 perceived that they had lost out on opportunities for promotion because of an increased awareness regarding sexual harassment.

With regard to compensation, despite a general satisfaction, we also see that women tend to earn less on average than men in Utah's legal profession. In 2010, the largest group of women survey respondents earned less than \$40,000 a year while the majority of men earned more than \$175,000 annually. Among full time attorneys, a majority of women earned less, and a majority of men earned more than \$125,000 annually. In 2020, the largest group of women respondents earned between \$60,000-\$80,000 per year, while the largest group of men earned between \$100,000 - \$125,000 per year. In 2020, men were more likely to be among top earners in the profession: 5% of men reported earning over \$500,000 per year compared to only 1% of women.

“

*Women, my understanding is that we graduate at the same rate, go into firms and then get stunted in the paralegal position. You do the work, we're going to go out to lunch, spitball, shoot the shit and be immature and unorganized, and you keep everything together and we'll go ahead and take most of the pay. Women find that that's really unfulfilling and not worth it. It's not worth it. So those women leave.*

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# Key from In

# Findings interviews

## ***Voices from the Margins***

Women of color and Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ+) lawyers remain underrepresented in Utah's legal profession. As a result, these professionals were underrepresented in our survey findings, which makes statistical conclusions about their experiences difficult. To correct that limitation, we provide insights into some of the unique challenges these professionals face in Utah based on in-depth interviews. In this way we hope to make visible the experiences of bias due to race, ethnicity, gender identity/expression and sexual identity that may be under-reported in our survey data.

## Women Lawyers of Color

Women of color occupy a unique position in high-status professions. They are underrepresented as women and as people of color. In addition to gender bias, they also experience racial or ethnic bias. Yet their experiences are not shaped by race and gender independently. Rather, they experience bias at the intersection of these identities.<sup>15</sup>

Nationally, women of color are underrepresented in legal careers. While women of color represent nearly a fifth (19%) of all law school graduates, they hold fewer than 9% of law firm positions and fewer than 4% of law firm partnerships. In Utah, communities of color comprise over 20% of Utah's population,<sup>16</sup> yet women of color comprise only 10% or fewer of all legal positions – including in-house counsel, associates and staff attorneys. In senior position, the absence of women of color is even more striking; women of color represent only 2% of Utah's judiciary and only 1% of law firm partners.

This degree of underrepresentation creates unsustainable challenges for these members of the profession. Interviews reveal that women of color lawyers<sup>17</sup> routinely confront three major challenges: (1) a burden of doubt with regard to their status and competence; (2) challenges associated with extreme tokenism; and (3) hostility and exclusion from colleagues and professional networks.

Several respondents reported that colleagues, opposing counsel and even clients routinely challenge their expertise and professionalism. One respondent relayed several instances of being challenged or undermined by opposing counsel and clients by the use of racist and dismissive language. She shared:

“One [opposing counsel] referred to me as “that Mexican girl”—that’s actually one of the more tame ones....One of the family members [of a client] used the term “wetback” in reference to me, which made me laugh because my family has been here for generations....yet that has happened.”

Another respondent described several instances when her competence was questioned and/or when her colleagues micromanaged her work product to ensure its quality – even as she advanced into senior positions. She said, “There are cases where clearly it’s because I’m a woman of color that you don’t think I can hit the standard, that you don’t recognize that I’m helping you hit it.” She detailed one instance where, despite her role as the senior legal counsel at her firm, the other legal team requested that her CEO attend meetings. According to one of the lawyers on the team, “they don’t think you’re authorized to talk about this and in fact one of the [other] CEOs wondered whether or not you were experienced enough to deal with this.”

<sup>15</sup> Crenshaw 1991.

<sup>16</sup> Utah's non-White population is growing rapidly and is expected to nearly double in the next several decades (Hollingshaus, Harris & Perlich 2019).

<sup>17</sup> All of the women quoted in this section are women of color. However, to protect the identity and ensure the confidentiality of our interviewees, we do not provide any additional identifying information.

Women of color also reveal experiences of being the only one in the room and the ways that solo or token status has affected their careers. Many respondents, regardless of rank or position, are routinely mistaken for staff, paralegals or court reporters. Extreme tokenism can increase stereotypes and place intense performance pressures on individuals.<sup>18</sup> One respondent revealed her own experience with bias:

*There's no peers of yours. You go into an all-White room. Um, yes, there are some women there but it's usually the majority men....it's just so shocking how homogenous (Utah is)...like I can go a whole day without seeing anyone of color a whole day.*

Some respondents experienced outright hostility from colleagues and exclusion from professional opportunities and networks. One stated, "On more than one occasion I obviously encountered open racism. I'll just be honest." She recalls a deposition in which a White man lawyer made a racist joke about the Hispanic-sounding names of the parties. When the lawyer expressed displeasure about the joke, her colleague at first encouraged her to "lighten up"<sup>19</sup> before saying "Oh yeah, I forgot you're one of them, aren't you?"

Importantly, many women of color with children also viewed leaving their careers as nonnegotiable. Cultural discourse in Utah suggests that mothers have a "choice" to continue to work or to "opt out" of careers after their children are born. However, the ability to opt out reflects a significant degree of class privilege that many women of color in particular lack. Women of color are more likely than White women to be financially responsible not only for themselves and their immediate families, but for members of their extended family as well. Women of color are also more likely to rely on extended family for support while obtaining their degrees. This, in turn, creates a greater sense of reciprocity once they establish their careers. As a result, the notion of "opting out" of a career is viewed as a privilege that is simply unavailable to them. One respondent explained that many women of color, like herself, have to overcome tremendous odds to succeed and carry the responsibility of supporting many people beyond themselves and their immediate family:

*I find that women of color have...so like when you see your White women counterparts, it's usually their just immediate family. It's like them and their husband and their children. Whereas I find in families of color, you have more extended family that I find that, that women are more, not responsible for, but are more generous towards. Like they have a parent, or they have a sibling, or they have cousins, or they have a niece or nephew or they have something that they're also contributing to other households, not just their own.*

<sup>18</sup> Tokenism refers to the experience of being the only or one of the only members of a group in the workplace (Kanter 1977; Wingfield 2013).

<sup>19</sup> Enjoyment of sexist and racist jokes is correlated with racist and sexist attitudes (Greenwood & Isabell 2002), and exposure to such jokes can reinforce sexist and racist behaviors (Ford et al., 2013). Women and people of color who speak up about racist or sexist jokes are often accused of being uptight, humorless and/or difficult to work with (Hay 2000; Hughes 2003).

## LGBTQ+ Lawyers

Among survey respondents, 4% of man-identified and 8% of women-identified respondents are lesbian, gay or bisexual. Only two respondents identified as transgender or non-binary. This under-representation mirrors national trends.<sup>20</sup> Though the representation of openly LGBTQ+ lawyers is increasing, these individuals remain underrepresented in law relative to their overall numbers in the population. A great deal of research at the national level reveals that LGBTQ+ workers are significantly more likely than other employees to experience harassment, discrimination, job loss and violence in the workplace.<sup>21</sup> These forms of bias and exclusion are even greater in conservative cultural contexts where moral judgments about gender roles, sexual identity and gender expression predominate.<sup>22</sup>

Interviews revealed that LGBTQ+ lawyers<sup>23</sup> routinely confront three major challenges: (1) bias and discrimination; (2) challenges securing clients from the dominant culture; and (3) harassment from peers, including opposing counsel.

One respondent detailed how she was denied access to prestigious law firm jobs in Utah even though she graduated at the top of her class and received multiple offers from law firms out of state. She was invited for more than a dozen interviews to Utah firms. At each interview, she was told she clearly had the skill and credentials for the position, but the firm was concerned about her “fit.” She told us:

“*So, I don't know what the disconnect was, but I think whatever is at play is at play at law firms here. And so maybe women have to be that much better or maybe it just seemed risky to have this lesbian mom....law firms are just hostile. They're hostile. It's hard to be in conflict all the time.*”

Yet another respondent described how several of her colleagues remain closeted at work for fear that revealing their sexual or gender identity would negatively impact their careers. She believes that growing up LDS can help LGBTQ+ individuals navigate their careers as outsiders, “It's such a part of the culture and you can talk the talk even if it's not something your active in or part of...It's such an overwhelming part of living in Utah.” However, she noted that LGBTQ+ individuals who are not familiar with the dominant culture may face even greater barriers to inclusion.

Another respondent believed that building a client-base in her area of law in Utah is nearly impossible. She has devoted herself to building up a national client base in order to build a successful career in Utah – a significant burden not faced by her non-LGBTQ+ peers. She told us about her challenges:

“*The [clients] in Utah, I hate to say it, but they're almost all male and devout members of the Mormon faith. They're mission presidents, stake presidents, whatever. They're not going to look at me with a lot of fondness. It will affect me once I become a partner. I'll have to have a more national footprint.*”

<sup>20</sup> NALP 2017 report.

<sup>21</sup> Cech & Rothwell 2019.

<sup>22</sup> McCullough et al. 2019.

<sup>23</sup> All the quotes in this section come from lawyers who identify as LGBTQ+. No other identifying information is provided in order to protect the identity of our respondents. Due to the nature of the project, interviews focused exclusively on women-identified lawyers and thus we cannot provide insight into the professional experiences of male-identified or non-binary members of Utah's legal profession. We urge researchers to focus on this important population in future research.

One respondent recounted several instances of being harassed or bullied by opposing counsel due to her gender and sexual identity. In one instance, she remained in the courtroom long after the proceeding had ended out of fear of being harassed in the hallway. In another instance, an opposing counsel included a paragraph in a brief to the court that referred to her as a “militant feminist lesbian.” This type of abuse deeply affected her well-being and career commitment. She confessed:

“*I think it affects me because, the first thing I always think is I’m going to quit. I can’t do this anymore, I don’t want to do this anymore....And then it upsets me for several days, it takes me a couple days to get over it. I think it has a huge emotional toll to it. Huge, massive. I absolutely love being a lawyer and I love practicing [in this area of] law. To my core. When it makes me want to quit, it’s a big deal.*”

Many of the respondents mentioned they hold memberships in legal organizations such as Women Lawyers of Utah (WLU), the Utah Center for Legal Inclusion (UCLI) and the Utah Minority Bar Association (UMBA) and/or viewed these organizations as potential champions for change. One respondent noted that two of her firm’s partners were active in UCLI and she believed this engagement by her firm’s leadership had motivated an effort to increase diversity among recent hires. Another stated that she routinely relies on the WLU and the Minority Bar Association to increase the women and minorities in her pool of applicants when she is hiring for a new position. Several lawyers mentioned the significance of the first WLU report in increasing awareness of gender bias in the<sup>26</sup> profession. One said, “the first [WLU] report was helpful in [raising awareness]. And I think having a more nuanced report will be helpful.”

However, some respondents felt these organizations needed to be more inclusive. One interviewee observed that the leadership and membership of these organizations is largely comprised of White men and women. According to one Latinx interviewee, “WLU [is] very much so, very, very much so, targeted to White women.” Another respondent stated that for the past three years the UMBA has awarded their Distinguished Lawyer of the Year award to White men. She said, “The Utah Minority Bar Association cannot consistently and continuously highlight White men or White women as their champions. We have to be our champions.”

While this section represents voices from the margin, their experiences, contributions, and stories are not marginal. Time and again, our interviewees explained that these incidents had become so much of their norm that they developed survival skills and mechanisms to help mediate the frequent slights, insults, and underestimation they experience at work. When asked how she deals with racial bias, one respondent explained: “You have to be like a duck. You have to let things roll down your back and then just shake them off. Because if you allow yourself to spend too much time in a negative space, then you yourself become negative.” Among the many experiences recounted to us in these interviews, one thing is abundantly clear—despite these frequent incidents of bias and microaggressions, their love of the law and commitment to excellence is what ultimately builds their resilience and resolve.

## Bias During Law School

Law schools have made significant strides in recruiting women and people of color law students and appointing White women and women of color to Deanships. In fact, 35% of law schools are led by women, including half of the top ten schools based on U.S. News and World Report rankings. Among those schools, women of color now represent 10% of law school deans nationally.<sup>24</sup>

### Faculty & Leadership Gender Composition of Utah Law Schools

2020

#### FULL-TIME WOMEN FACULTY

S.J. QUINNEY COLLEGE OF LAW 49%

J. REUBEN CLARK LAW SCHOOL 30%

#### DEANS & ASSOCIATE DEANS

S.J. QUINNEY COLLEGE OF LAW 67%

J. REUBEN CLARK LAW SCHOOL 33%

As indicated earlier in the report, over 50% of recent graduates of the S.J. Quinney College of Law are women, consistent with national trends. By contrast, only 40% of recent graduates from the J. Reuben Clark Law school are women. These differences are mirrored in the gender composition of the faculty and leadership of Utah's two law schools.

Despite recent gains, women and students of color continue to face bias and harassment in law school. Recognizing these challenges is important because early experience of bias can influence attitudes toward a career and limit women's desire to build a career in law. Here we highlight the experience of bias of women lawyers who attended law school in Utah.

During her time at BYU, one early career respondent was subject to pervasive negative judgments of women law students. While her overall experience was positive and she benefited from the mentorship of other women graduates, she recalls hearing men classmates routinely dismiss women's achievements. She recounted one particular incident:

*I remember sitting up in the law review room, editing a paper. There were some guys at the end of the table talking and I could hear them. Internships had just gotten posted. They were mad, "did you see so and so some girl [name] got one of the spots?" They were so mad, "she got one of those spots and now there's some guy with three kids and a mortgage who won't have that spot." They were mad that they had taken these away from men with families and that was unfair and unjust and suggesting maybe they got them because they were women and they were playing a token diversity card.*

<sup>24</sup> Sloan 2019.

Several women and mothers reported experiencing harsh judgments of their decision to attend law school by men classmates. Men classmates often expressed judgment that women were “stealing” spots from more deserving men or abandoning their children to attend school.

One later career respondent described some of the challenges she experienced as a mother with young children in law school. She disclosed the following incident:

*In law school, I was in my second year studying in my carrel, minding my business. And another student walked up to me and said, “If women like you weren’t here, my friend could be here. Instead he doesn’t have a spot because you took it.” I thought, you’ve said this to the wrong woman. I said, “If your friend had my LSAT scores and my academic record, he wouldn’t have to worry about someone taking his place.”*

More recently, her daughter—now an early career attorney—attended the same law school. When a classmate realized that her mother was a very prominent member of Utah’s legal community he said, “Your mother works? She’s evil.”

Another early career respondent excelled at law school even having young children and significant family obligations. She received backlash from classmates, finding notes on her desk that said, “Woman Come Home”, and being asked how she felt about deserting her kids. According to the respondent, “BYU was atrocious. Being in school there was...the harassment and bullying women experience is unbelievable.”

Women of color face a burden of doubt in law school regarding their worthiness to be there.<sup>25</sup> Many were confronted with accusations of “stealing” a spot because their admission was assumed to be based on race, ethnicity or gender. One later career respondent, a woman of color, described how, despite receiving several merit scholarships due to her outstanding academic record, many students accused her of occupying a space she had not earned. She said:

*The assumption was always that I was in law school because I was a minority...It was an inhumanely competitive place...And the men were hanging up pictures of women. I told a professor, “This is offensive to have semi-naked women in our lounge area.” And [the men] got all pissed off at me cause they had to take it down. It was toxic.*

The experiences of bias during law school is important because it can shape women’s attitudes toward the profession. Significantly, our respondents include those who have sustained careers in law. Many others may have left law due to signals they received in law school regarding the climate for women in the profession.

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<sup>25</sup> Gutierrez y Muhs 2012.

# Solutions According to Respondents

Each interview respondent was asked to offer solutions to overcome biases in the careers of women lawyers. Lived experience grants important insights into defining problems and solving them. We want to honor the experience and insights of respondents by sharing the depth and breadth of their ideas for making legal careers in Utah more equitable. We share these insights below across eight areas: (1) cultural change, (2) education, (3) mentoring, (4) representation, (5) diversity policies, (6) networking, (7) parental supports and (8) alternative pathways.

## Cultural Change

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*I think for them [women] to be prepared just to understand what it is they are getting into, that it will be okay, there will be people who say negative things, positive things. [women should] develop a thick skin to be able to get through that.*

”

“

*One thing that might help is shifting the culture to more involved fathers because if the culture thinks that stay at home parent is important and that can be the father as well then you don't have to give up as much as a working woman.*

”

“

*We have to start accepting as a society that being a parent is the same for a man as for a woman. We're both going to be working and women better have the opportunity without the guilt. Get their education, pursue their goals and then their children will be the better for it. The key is how to raise women to feel as free as the men we are raising to pursue what they want to pursue, to think deeply about what they want to think deeply about. The big issue requires consistent societal change in how we raise and treat our girls. Regardless of your religious beliefs, we all benefit if we can figure out how to raise women and men to understand: you get to choose who you are.*

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*One of the things is to teach women you are valuable, it's okay to ask for these things, we've been taught to shy away from conflict, that's not our role.*

”

“

*I think some “call out” culture would be nice...Bringing some attention to it. The first [WLU] report was helpful in doing that, and I think having a more nuanced report will be helpful. There were a lot of CLEs around it, a lot of people attended those.*

”

“

*A way to help is to put women—encourage women—to go into the high paying jobs where they are fulfilled, it pays for childcare then it's worth it.*

”

“

*Changes in attitude are key. I've said to other women, what can we do? One thing I can do is I raised sons. And my sons are different.*

”

## Education

“

*You need to educate more on ways and means to pay for things. Minorities are afraid to take out debt. We need to expand people's horizon. High school, college, let people know law schools have scholarships now.*

”

“

*If you are going to start, start earlier. In high school and college. Say, look this is a cool career. We've talked about going into the high schools. You can be a mom and do it.... Start the pipeline a lot sooner than what we're starting it at.*

”

“

*I don't think the children are encouraged to go [to law school]. Both at home and in school. I still think there is a bit of latent racism that teachers, with their implicit bias without even realizing it, just don't gear those kids towards those roles. I don't know that many children of color have that same level of support [that white children have] at home and at school. There needs to be a lot more of that.*

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“

*It's helpful for women as students at the law schools and maybe even before and newer attorneys to just be exposed to the fact that there are different ways to do it [alternative schedules]... if we could present those alternatives and make them more visible to students and let them know they're out there, then they might not dismiss the possibility outright.*

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“

*A lot of it is education and encouragement...that's why I get involved in the stuff at the law school is to try to encourage the girls that are planning to go out and have a career.*

”

*“ Career counselors could be a great help, networking with people who have done things in different ways so people can see there are more options than the typical career path. ”*

*“ I think it's important for women to plan for it and not just find themselves there. By that I mean we should be encouraging women in undergrad to get the highest GPA possible because that will get them the scholarship and if they are on scholarship or doing really well in their class, that's what will get them the good jobs. ”*

## Mentoring

*“ If they [the WLU] were able to do more one-on-one mentoring, that would work. ”*

*“ What women attorneys can do, find a mentor, understand you're not the only one out there. ”*

*“ Some of it is you can't be what you can't see so there is again being one of the few Brown ladies in law, there's been a lot of pressure to be more visual to those kiddos, which is why we're thinking about this mentoring program. Truth be told, that's how I got started. My friend's dad was a judge in Texas and I learned Brown people can be judges....There really does need to be a push for lawyers of color to be really visual, visible and it sucks cause we're already so busy. ”*

*“ It really helps to have a woman who could give real and meaningful advice. ”*

## Representation

“

*I think those women who have actually continued on and worked and if they could explain their reasons and rationale to the women who are considering leaving that might help. Maybe in law schools, early careers, maybe Utah State's Bar have to set something up where women can get together and hear other more experienced women talk about issues.*

”

“

*Get women in leadership, so women realize they can do it too.*

”

“

*More discourse might help. More examples if women saw examples of other women.*

”

“

*Having more female judges would be a very good thing... I'm sure when there's more women and the disparity on the bench changes, that will help.*

”

“

*It's just getting more women on the bench.*

”

“

*A lot of it is exposing young people [to the legal field].*

”

“

*Encourage women, seeking out qualified women, you should apply for the bench too, also provide training for them and help and resources to improve their chances. I do actually think that's necessary in my legal community in SLC and state of Utah as a whole.*

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*I know there were conversations about in the past, trying to ensure that women got better roles and projects within law firms. And how as an in-house person, I can move the needle on that. I consciously hire women.*

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*As women we need to promote each other and not be afraid of what the male will think. When women do it, it's another woman promoting another woman. When a man does it, it's just business. Despite what people say, support women, but don't [if you] realize that their practices hurt women or disrupt women's lives.*

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## Diversity Policies

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*Being active with their [diversity] policies and helping and implementing those is important. Especially the partners making sure they are encouraging those policies.*

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*Definitely affirmative action is passé but it still needs to be a part of promoting women and minorities in Utah.*

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“

*A lot of firms are pushing a lot of resources into recruitment and not enough into retaining attorneys of color....I feel like [diversity and inclusion have] become buzzwords, and that they can adopt a different meaning depending on the context...And so I hate the words...I'm hopeful that we will see more programs that recruit people of color and support people of color. And that people really will start to see the benefits of having a diverse outlook.*

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*If we had more diversity targeting in hiring, it would be good for this office.*

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“

*CLE panels where we actually ask male attorneys and female attorneys at the management level of firms to come and meet with us so that we can talk to them about some of the implicit bias, some of the not-so-implicit bias, some of these problems, methods they can take at management level.*

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“

*I really think that when we think of inclusion and diversity and the law in Utah, we think of women. We don't think of people of color. As a woman of color, I know who my allies are. And many times the White women are not my allies. So people think, if we get a woman, then we hit the diversity quota. Right? Or let's get a woman and then they don't consider the only Black male in the state.*

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*Things get done on the surface but we don't dive any deeper. There's a racial inclusion provision at the Bar that everyone adopted and then nothing happened with that. The committees are still White people. There's no people of color on the committees that I work on. They're mostly all White people but they all have a diversity and inclusion policy, we all did that. But there's no real work being done on it.*

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*We've come a long way in the sense that we had an inherent bias training at one of the conferences. One of the judges was offended they had to sit through it because they think it's not them... They just think, well, I'm not grabbing anybody's butt so I don't have any bias or any harassing behavior... [We need to] recognize that it's institutional, everybody plays some role in that, and that we need to keep focusing on it.*

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## Networking

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*Firms actively supporting socializing with other attorneys and making sure, not mandating that you have to invite the women colleagues, but [there should be] something that helps encourage socializing within the firm between male and female [attorneys].*

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*One of the things I think is developing a good relationship with coworkers and trying to balance...Developing networks of people to help share the load.*

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“

*Some firms have actually built sort of a, sort of practice group, that's like women in law practice group... they meet together and talk about women's issues at the firm and in the practice generally... I think it would be nice to just have that kind of set structure.*

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“

*Law, it's a hard job. There's a lot of mental illness. Here's my belief on wellness: it's friends. Women need more friends, we need more colleagues. We need to reach out, talk. The problem with the wellness stuff is we're expected to deal with it all, and not drop any of the balls. But if you have colleagues you can call, we need networking. Once you get to it, you need to support it. Women drop off at every stage because they're not supported.*

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## Parental Supports

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*I think a message of just it's okay to work while you have kids, as that becomes more mainstream even in the LDS population, that will help.*

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“

*There needs to be better support among firms and a greater judiciary and law community about what it means to be a woman in the law if you have young children.*

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*I think more flexibility [is the best recommendation].*

*I would not suggest a young woman to take a partner track to take time off. A lot of women do have children but that's after they have job...You have to obtain the job, show your worth then do whatever you want.*

*I don't know if people realize how hard you'll work if you're given the opportunity to find the right balance for yourself. If and when women need it, give them the flexibility they need. And some men might need it. To be able to do that, you're going to buy loyalty and hard work. It's going to pay off huge in the future.*

*One area where Salt Lake City is behind is paternity leave. That needs to change and needs to change quickly.*

*Childcare is so expensive and, you know, it's so expensive and I think that more affordable childcare [would help women's careers].*

*You got to be willing to be flexible especially when moms are balancing young kids. It's just different. If we value that, we have to make it work for them. Meaningful paid leave, work from home options, the ability to wind down and jump down when and if they're ready.*

*Flex time, alternate work schedules. Something that is really important in keeping women in the law.*

“

*I took 4½ months [of parental leave]. Because again my incredible female boss at the time said—I think she was very concerned about me leaving—she was very aware of women dropping out of the profession when they have children. She said, ‘You take as much time as you want and when you come back, you can work whatever schedule you want, you can work at home two days a week, just don’t quit. There are studies that I saw somewhere that showed if, I think it was specific to female attorneys, if they have four months of leave the likelihood of their coming back significantly increases. And I felt like, yeah, I can see that.*

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## Alternative Career & Family Pathways

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*And then my husband was a stay-at-home dad for 10 years.... And so when we made the decision to have children, I told him, “I would really rather have a stay home parent but it is not going to be me. That’s not what I want to do. And plus, I can make sometimes more money than you can.” And he said, “Absolutely! I want to stay home. I don’t want to put my infant into daycare. I want to wait until they’re older. And I will stay out for them.”*

”

“

*Women need to see you don’t just have to practice full time at a big firm.*

”

“

*Look at how many women have stay-at-home husbands now. It’s just not well known. We just need to make it more commonplace.*

”

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*[A solo career] is the way to go for everyone. There's no tradeoff. I do my work and I get 100% of what I make. My reputation is 100% based on what I do. I have a bunch of women friends who work at firms. They do so much of the guys' work, the reputation building, and they get screwed. I ask all the time, why don't you go out on your own? ...I'm thinking of five women where financially it doesn't make sense to do what they're doing. Taking on all the work but not making all the money. And I can think of other solo women and we make a lot more money. A lot more than our friends in firms.*

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*[As a solo practitioner] you call every shot. You also take all the hits. You deal with all the finances. The benefit is you make all the decisions.*

”

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*My husband stopped working [when I graduated from law school]...I love knowing my kids are home with the person I trust the most in the world. It just kind of works for us. I'm very much not a homebody. I would go crazy being a stay at home mom. But we wanted someone to be home when the kids were young. I have a higher earning capacity and a stronger desire to work. We made the agreement and it works great.*

”

“

*I was able to convince my husband to be a stay-at-home dad. He agreed. He quit and from then on it was really easy...I've always said I couldn't have done what I did without that.*

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# Best Prac for Reduc

## Best Practices For Organizations

### ***How can organizations reduce bias and support the advancement of women and people of color?***

Inclusion and equity enable organizations to succeed because they reduce the barriers for talented individuals to rise. If barriers exist that limit the recruitment, retention and advancement of a diverse talent pool, then the organization is failing to achieve its potential.

Research overwhelmingly supports the conclusion that the integration of women and people of color into professional occupations benefits the profession, the organization and society as a whole. Organizations that lead the way on inclusion and equity are more innovative, more profitable, better governed, more sustainable, enjoy stronger relationships with their communities and are more equitable.<sup>26</sup> In the words of former PepsiCo. CEO, Indra Nooyi, recruiting, retaining and advancing women and people of color is a “business imperative.”

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<sup>26</sup> Cook & Glass 2015; Glass & Cook 2018.

# Practices in Reducing Bias

Failing to prioritize inclusion and equity is costly for firms. A majority of Americans want their companies to do better when it comes to inclusion yet progress on advancing women and people of color remains uneven and stalled.<sup>27</sup> Failure to prioritize inclusion and equity lowers job satisfaction and productivity, increases absenteeism, reduces work commitment and job engagement, increases turnover and puts organizations at risk of discrimination and harassment claims.<sup>28</sup>

Work in support of inclusion and equity is urgent for strengthening organizations and providing a pathway for talented individuals to succeed in Utah and beyond. Inclusion is synonymous with talent, dynamism, innovation and performance. Yet research finds that most people believe that progress on inclusion happens inevitably over time, without effort, strategy and planning.<sup>29</sup> The purpose of this report is to guide an intentional, comprehensive strategy toward achieving greater equity in your organization.



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<sup>27</sup> Burns 2012; Krentz 2019.

<sup>28</sup> Ellingrud, Manyika & Riefberg 2016.

<sup>29</sup> Hinchliffe 2019.

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*What I'm after is bringing the most diverse populations inside of my organization and tapping into the brilliant minds that come from a universe of experiences that are very different depending on how you grew up, your community, your neighborhood, how you solve problems... Inclusiveness is very important to me and that means when I step into the room –yes, I may be different from everybody at the table – but I don't have to 'fit in'. I get to come in and be who I am and I create a different organism inside of that group dynamic for us to take performance to the next level.*

– BERNARD TYSON,  
CEO of Kaiser Permanente

”

## A Systems Approach to Bias Reduction

The data presented in this report demonstrate that gender and racial/ethnic bias is not an individual or isolated phenomenon. Workplace bias follows predictable patterns that can be observed over time (2010-2020), across space (nationally and in Utah) and across organization type (in-house, law firm and government jobs).

The systematic nature of bias requires a systematic approach. However, all too often diversity initiatives focus solely on individual-level approaches or isolated instances of bias rather than approaching the problem systemically.<sup>30</sup> For example, diversity training programs are often punitive rather than preventive, implemented when there is a documented case of harassment or discrimination and intended to weed out or rehabilitate perpetrators. As a result of this “bad apple” approach, trainings often fail to reduce bias and, in some instances, even exacerbate it.<sup>31</sup>

Another individual level approach commonly taken by organizations is a “fix the woman” approach, that focuses on encouraging women to be more (or less) assertive, more (or less) competitive or more (or less) ambitious.<sup>32</sup> As with the “bad apple” approach, the “fix the woman” approach fails to address systemic problems within and across organizations.

Many common approaches to equity and inclusion assume that the problem of bias is individual and isolated. If biased individuals can be “fixed” then bias in the organization can be eliminated. This approach also reinforce overconfidence in our own judgment; if only “bad apples” take biased action, then those of us who are “unbiased” don't have to worry about our everyday practices at work.

By misrecognizing the systemic and implicit nature of bias, many common approaches to rooting out bias fall far short of

reaching their goals. If bias is embedded in organizational practices, the solutions must also be organizational. Not surprisingly, many conventional approaches to equity and inclusion have failed to produce desired results.

<sup>30</sup> See “Best Practices for Individuals” in this report for guidance on the ways we can all work to reduce bias in our organizations.

<sup>31</sup> Over 1,000 studies have found that mandatory trainings have little or no impact on reducing bias in the workplace. In fact, mandatory trainings are negatively associated with the advancement of people of color and have no effect on the advancement of White women. Many trainings inspire a “backlash effect” that can exacerbate biases in the workplace (Dobbin & Kalev 2019).

<sup>32</sup> Despite widespread assumptions that women are poor negotiators, lacking in confidence in the workplace, risk-averse, more caring or cooperative or less committed to their careers, empirical evidence simply does not support these conclusions.”

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*Differences are not rooted in fixed gender traits. Rather, they stem from organizational structures, company practices, and patterns of interaction that position men and women differently, creating systematically different experiences for them.*<sup>33</sup>

– TINSLEY & ELY (2018)

”

American companies spend billions of dollars a year on diversity trainings and hundreds of millions on diversity consulting. Yet these investments produce modest results at best.<sup>34</sup>

Disrupting well-entrenched patterns of bias is difficult but vital work and requires a systems approach to bias reduction. A systems approach requires organizational rather than individual remedies. Workplaces have proven to be overwhelmingly ineffective at rewiring the human brains or “curing” individuals of their bias. However, best practices allow us to *change the conditions under which decisions are made*, thereby leading to better, less-biased decisions.<sup>35</sup> The critical ingredients of a data-driven systems approach to bias reduction includes the following steps:

**STEP 1:** Leaders must communicate that bias reduction is an imperative and demonstrate that commitment through action. Effective leadership should:

- Be transparent about evidence of bias and efforts to reduce it;
- Set goals & timelines for achieving data-driven equity and inclusion outcomes at all levels;
- Hold organizational stakeholders accountable for progress on goals;
- Pursue routine and repeated efforts to identify and evaluate progress;
- Endorse ongoing efforts routinely and visibly.

**STEP 2:** Form a Bias Review Taskforce<sup>36</sup> that includes stakeholders from across the organization. All members must be encouraged to participate on equal terms irrespective of rank or position. The purpose of the team-based approach is to:

- Evaluate systems, policies and procedures—and their outcomes and impacts—across the organization;
- Collect data on representation, recruitment, retention and advancement throughout your organization;
- Ask and answer the following questions using data: what patterns do you see? Where are your strengths? Where are your weaknesses? What problems do you have and in what units?
- Compare your organization to the available pool of candidates based on law school graduation rates and state and national availability;
- Communicate with members of underrepresented groups regarding their perceptions of the climate of the organization;
- Identify best practices for improving systems, policies and procedures;
- In collaboration with leaders, set goals and timelines and identify the lines of accountability for progress;
- Communicate successes, challenges and progress to leaders and other stakeholders.

<sup>33</sup> A recent study electronically monitored men and women professionals in a large workplace over a significant period of time. The study found no perceptible differences in the behavior of men and women at work – including in terms of their contacts, their time allocation and their work patterns. Yet within that workplace, men advanced and women did not (Turban, Freeman & Waber 2017).

<sup>34</sup> Dobbin & Kalev 2019.

<sup>35</sup> Beshears & Gino 2014.

<sup>36</sup> Taskforce efforts such as the one proposed here increase the representation of women and men and women of color in leadership by promoting accountability, engaging members across units in a positive way and increasing intergroup contact (Dobbin & Kalev 2016).

**STEP 3:** Implement Best Practices throughout the organization.

- Focus separately on recruitment, hiring, retention & advancement;
- Encourage open vertical and horizontal communication and collaboration across units about progress, challenges, successes and failures;
- Evaluate progress routinely and repeatedly, including a review of mistakes and failures. Failures are inevitable – adopt a “no blame, no shame” approach that supports experimentation and reevaluation;
- Communicate progress and failures to stakeholders along with new goals and timelines for achieving success;
- Engage all personnel and units in this process and avoid segregating equity and inclusion functions in low status sections of the organization.

Achieving inclusion is a process of *continual learning*.<sup>37</sup> View new practices and procedures like a clinical trial. Continue to tweak, rethink, redevelop and experiment with new combinations of policies to identify the most impactful practices for your organization. However, a methodical, systemic and data-driven approach always requires specific goals, timelines, measured impacts, feedback and revision.

We now turn to a review of practices known to reduce bias in hiring, retention and advancement. However, we discourage “cherry picking” approaches as there are no silver bullets when it comes to disrupting bias in work organizations. Rather, we recommend these approaches be viewed as critical tools for a systems approach to bias reduction. In each area, there are *three overriding principles* that should guide your design of every practice and procedure within your organization:

**OBJECTIVITY:** rely only on objective, standardized information to evaluate candidates for hiring, performance and promotion.

**TRANSPARENCY:** be transparent about the criteria for hiring, compensation increases and promotion and apply the same criteria to every candidate.

**ACCOUNTABILITY:** ensure that decision-makers are accountable for the decisions they make – all decisions should be based on transparent and objective evidence of talent, skill and experience.

## Hiring: Recruiting Talent

Inclusive recruitment and hiring practices are vital to supporting equal representation of talented professionals in your organization. Recruitment and selection must be done in a formal, objective and transparent manner.

### DO

ADVERTISE WIDELY  
TARGET RECRUITMENT EFFORTS  
INTRODUCE BLIND EVALUATIONS

### DON'T

PRACTICE “STATUS QUO” BIAS  
GO WITH YOUR “GUT”  
MISTAKE POTENTIAL FOR PERFORMANCE

<sup>37</sup> Tinsley & Ely 2018.



## JOB ADVERTISEMENTS

Job advertisements must be written in gender and race neutral language and in a way that focuses solely on objective, measurable requirements and qualifications.<sup>38</sup> Include criteria in the job description that signals your inclusion goals such as a diversity statement or experience working with diverse teams. Use caution when requesting application materials that may reinforce or reproduce bias in your evaluation. For example, a study of thousands of reference letters found that letters for men were longer, more likely to mention accomplishments and more likely to make a strong endorsement. By contrast, letters for women were many times more likely to mention personal life and more likely to mention effort rather than accomplishments.<sup>39</sup> If you collect reference letters, discourage reviewers to rely solely or excessively on any single metric. Limit reliance on referral hiring, which tends to reinforce the status quo. Instead, be transparent about vacancies and advertise widely.



## TARGETED RECRUITMENT PRACTICES

Pro-actively place advertisements in and recruit candidates from places that target members of underrepresented groups. Targeted recruitment programs have a significant and positive effect on the representation of women and people of color – they work but many organizations do not use them as an inclusion strategy.<sup>40</sup> Engage all personnel with hiring responsibilities to help your organization identify talented women and minority candidates by making law school visits and reaching out to faculty and leaders of student groups. In Utah, go the extra mile to make sure minority candidates know about valuable community resources available to them including faith groups and community organizations, ethnic grocery stores, hairdressers, etc. This signals that your organization – and your community – are inclusive places. Evidence shows that five years after implementing a targeted recruitment plan, organizations' share of women and minority managers increases by an average of 10%.<sup>41</sup> Send personal invitations to distinguished women and minority candidates encouraging them to apply.



## CANDIDATE EVALUATION & SELECTION

Before you begin reviewing applicants, determine whether your pool reflects the gender and race of available candidates. If it does not, pause the search and continue to recruit until it does. Discuss the inclusion and equity goals of your organization openly among hiring personnel and collaboratively develop an evaluation rubric that evaluates applicants only on skills, experience and credentials outlined in the job advertisement. Apply the same evaluative criteria – and only that objective criteria – to every candidate. Dozens of experimental studies find that the resumes of women and people of color face more scrutiny, negative evaluation and critique than those of White men.<sup>42</sup> Women of color, in particular, face a greater burden of doubt even when they have the same experience, credentials and qualifications as other candidates. When and where possible, institute blind evaluation processes. Blind hiring includes any strategy that “blinds” evaluators to information that can lead to bias in the screening and evaluation of candidates. When possible, blind applicant characteristics that are not relevant to the position, including gender, race/ethnicity and parental status. Stress, time pressure and ambiguity increase bias in candidate evaluations – seek to minimize these for evaluators.

<sup>38</sup> Research finds that including stereotypically masculine language in job ads has a significant negative effect on women's representation among new hires in law firms (Gorman 2005).

<sup>39</sup> Madera, Hebl & Martin 2009; Trix & Psenka 2003.

<sup>40</sup> Dobbin & Kalev 2016.

<sup>41</sup> Dobbin & Kalev 2016.

<sup>42</sup> Bertrand, Chugh & Mullainathan 2005.

As you design inclusive hiring practices, beware of three common shortcuts that can increase the role of bias in your organization.



### BIAS RISK #1

#### HOMOSOCIAL OR "STATUS QUO" BIAS

Most of us tend to feel more comfortable with people who look, think and act like us. In hiring decisions, this means that many of us tend to unconsciously prefer candidates who are similar to us in terms of gender, social class, race/ethnicity and cultural background.<sup>43</sup>

In White and male-dominated professions, this means that women and people of color face a burden of doubt with regard to their competence, "fitness" and capability.<sup>44</sup> If your hiring process relies solely on objective criteria and if evaluators are accountable for evaluating candidates based on those criteria, then you can reduce the tendency for evaluators to advocate for candidates who are socially similar to them, thus disrupting the tendency to default to the status quo.



### BIAS RISK #2

#### DEFAULTING TO "FIT" OR GOING WITH YOUR "GUT"

All too often evaluators default to a vague sense of "fit" when evaluating candidates. This often means that candidates who do not look like or share the same background of current incumbents are deemed a poor fit for the organization. This default is exacerbated

by our tendency to misrecognize the skills and qualifications necessary to be successful. We often conflate the characteristics *typical* of a profession as characteristics *necessary* to the profession. In doing so, we reinforce stereotypes that view underrepresented members of the profession, including women and people of color, as a bad fit and/or lacking the qualities necessary to be successful.<sup>45</sup> A vague sense of "fitness" or "gut feelings" are not objective criteria and should never be used to evaluate, screen or select candidates.



### BIAS RISK #3

#### MISCLASSIFYING "POTENTIAL" AS "PERFORMANCE"

Research suggests that men and women are often evaluated on different criteria.<sup>46</sup> Men are often evaluated based on their *potential* while women are often evaluated based on demonstrated *performance*. Men's qualifications are also given less scrutiny than

women's and gaps or shortcomings in men's records tend to be overlooked or dismissed, while shortcomings in women's trajectory tend to be amplified and exaggerated. One experimental study presented evaluators with identical resumes – only the gender of the names varied. Evaluators identified the "man's" resume as more competitive, more accomplished and more hireable than the "woman's" resume. In fact, evaluators questioned "women's" accomplishments and raised doubts about their abilities.<sup>47</sup> Additional research finds that evaluators tend to assume that men but not women candidates have leadership potential and aspirations.<sup>48</sup>

<sup>43</sup> Holgersson 2012.

<sup>44</sup> Gutierrez y Muhs 2012.

<sup>45</sup> In Lauren Rivera's study (2016) on access to elite professions, she found that non-elite Black and Hispanic men were seen as lacking "polish" and "fit" while non-elite White men were deemed "coachable." Non-White men who were shy or reserved were viewed as "unassertive" whereas White men were viewed as "modest" and "humble."

<sup>46</sup> Moss-Racusin et al. 2012.

<sup>47</sup> Madera et al. 2009.

<sup>48</sup> Glass & Fodor 2018.

## Retention: Keeping the Talent You Have

As you pursue inclusive recruitment practices, ensure your organization is prepared to *retain* women and people of color. Nationally, women and minorities have much lower retention rates than White men, which harms the careers of talented lawyers and bestows high reputational and material costs on organizations.<sup>49</sup>

### DO

**PRACTICE INCLUSIVE NETWORKING**  
**EVALUATE OBJECTIVELY**  
**SUPPORT WORKING PARENTS**

### DON'T

**FOCUS ON STYLE OVER SUBSTANCE**  
**ASSUME MOTHERS AREN'T COMMITTED**  
**DISTANCE FROM WOMEN COLLEAGUES**



#### INCLUSIVE NETWORKING AND MENTORING

All employees must have the support and resources they need to succeed. This includes access to high-quality mentoring relationships with men and women colleagues and access to social networking opportunities that can advance their careers. Research finds that women are often excluded from professional networks and mentoring and as a result lose out on information about professional opportunities, clients and contacts, and collaboration and support from colleagues.<sup>50</sup> Formal mentoring programs are effective and result in significant gains in the representation of women and minorities in leadership and supervisory roles.<sup>51</sup> In organizations that have no women or people of color in leadership, mentors should consider the impact of those gaps on the climate and perception of women and minority employees and adopt their mentoring accordingly.<sup>52</sup> Mentors and other leaders should be visible and vocal in their support for equity and inclusion and should be transparent with mentees about specific actions the organization is taking to reduce gaps in representation.<sup>53</sup>



#### PERFORMANCE EVALUATIONS & WORK ASSIGNMENTS

Criteria for evaluating the performance of employees and assigning case work must be *objective, standardized* and *transparent* so that all employees know how to succeed in your organization. Evaluators must be accountable for limiting the impact of bias on evaluations. Performance evaluations and assignments should be motivational rather than punitive. All employees must know the evaluative criteria for their position and must be held to the same standards of evaluation. The goal is to provide meaningful, constructive feedback and to develop, in tandem with employees, a pathway to success. Accountability for evaluators can be a powerful tool of change. Research finds that when evaluations are transparent and decision-makers are accountable, bias in evaluations is significant reduced or eliminated.<sup>54</sup> Practice these same strategies for allocating high quality

<sup>49</sup> Headworth 2017.

<sup>50</sup> McPherson, Smith-Lovin & Cook 2001.

<sup>51</sup> Dobbin & Kalev 2018. Informal mentoring programs support the careers of women and minority lawyers; however, many White men lawyers in senior roles are reluctant to reach out to them than if they are assigned through formal mechanisms (Jaffee et al. 2016).

<sup>52</sup> Martinez-Cola's (2020) recent work on mentoring of students of color finds that White mentors often tokenize or fail to understand the challenges facing their mentees. These challenges can be overcome, however, by providing meaningful and needed guidance and supporting the careers of junior colleagues in inclusive ways.

<sup>53</sup> While our guide is focused on organizational actions, we note that there is a vital and urgent role for White and men allies and co-conspirators to practice "bias interruption" routinely and regularly in the workplace. Allies and co-conspirators can amplify the voices and ideas of women and people of color, name and police everyday bias when it occurs, publicly highlight the accomplishment of their women and minority colleagues and otherwise raise awareness about and advocate for anti-bias initiatives. For guidance on how to become a strong ally in the workplace, we recommend Catalyst's research-based MARC program: <https://www.catalyst.org/marc>.

<sup>54</sup> Castilla 2015.

assignments. Whenever possible, seek to increase cross-group contact, integration and collaboration, which can reduce bias among and between members of your teams. And ensure that your teams are balanced in terms of gender and racial/ethnic representation.<sup>55</sup>



### **SUPPORT FOR WORKING PARENTS: PAID LEAVE & FLEXIBLE WORK ARRANGEMENTS**

Our interviews revealed myriad ways flexible work arrangements supported women's careers. Many women—including judges, law firm partners, in-house counsel and solo practitioners—have benefited from flexibility while the careers of many others were stalled or otherwise harmed by the absence of such supports. But supportive family policies and flexibility are not just important for women. A study of Harvard business school graduates found that men and women professionals were *equally likely* to desire a better balance between their work and family lives.<sup>56</sup> This means that policies that make work more manageable for *everyone* will increase retention, productivity and commitment of all workers. Make flexibility and work-life balance a core value of your organization and encourage everyone to take advantage of supportive policies. Research finds that flexible work arrangements reduce work-life conflict, improve worker health, and increase work commitment, productivity and job performance for *all workers*.<sup>57</sup> And when everybody uses flexible arrangements then negative stereotypes about mothers are reduced. Your organization should adopt gender-blind leave and work arrangement policies and men and women should be incentivized to participate in these opportunities.

As you design inclusive retention practices, beware of three common shortcuts that are likely to increase the role of bias in your organization.



### **BIAS RISK #1 FOCUSING ON STYLE OVER SUBSTANCE**

Research on performance evaluations shows that the vast majority of women – but only a very small percentage of men – receive critical feedback on their style, including their communication or speaking style or their interpersonal “manner.”<sup>58</sup> In fact, a recently study found that 66% of women receive negative feedback about their speaking “style” compared to only 1% of men.<sup>59</sup> This pattern contributes to the tendency to hold equal performers to different standards when it comes to evaluating work performance.<sup>60</sup> Furthermore, women and people of color are often penalized in performance evaluations for championing diversity and equity efforts.<sup>61</sup> Such “agency backlash” harms the careers of women and minorities and discourages efforts that support inclusion and equity. All workers should be encouraged and rewarded for championing equity and inclusion policies that aim to strengthen the organization.

<sup>55</sup> Pettigrew & Tropp 2006; Taschler & West 2016.

<sup>56</sup> Ely, Stone & Ammerman 2014.

<sup>57</sup> Chung & van der Lippe 2018.

<sup>58</sup> Snyder 2014.

<sup>59</sup> Ironically, men's speaking style is much more dominant and disruptive in the workplace. In work meetings, men speak approximately 75% more than women on average and they interrupt women speakers three times more often than they interrupt men speakers (Hancock & Rubin 2014; Karpowitz & Mendelberg 2014).

<sup>60</sup> Castilla and Benard 2010.

<sup>61</sup> Johnson and Heckman 2016.



### **BIAS RISK #2**

#### **ASSUMING MOTHERS AREN'T QUALIFIED, COMPETENT & COMMITTED**

There exist many myths about mothers' commitment to their careers. Research debunks these myths with evidence. One study of pro-work behaviors found that mothers are equal to or superior to other workers on all measures including work commitment and work intensity.<sup>62</sup> While mothers do not differ significantly from non-mothers in terms of professional commitment and competence, what does differ is the treatment of mothers and fathers in professional jobs. Mothers are often given less challenging assignments or expected to downgrade their careers. Fathers, on the other hand, are rarely encouraged to reduce hours or travel in order to dedicate more time to family care. Perhaps most important, research finds that career decisions that accommodate family responsibilities does not explain gender differences in career achievement.<sup>63</sup> Mothers and fathers should be treated equally and provided with the same opportunities for work-life balance and advancement. Rid your organization of "mommy track" jobs and the stereotypes and assumptions that accompany these jobs. And never, ever assume what mothers want (or don't want) out of their careers. When in doubt, ask them.



### **BIAS RISK #3**

#### **DISTANCING FROM WOMEN COLLEAGUES (IS NOT AN OPTION)**

Nearly every interviewee mentioned that she has been denied access to mentoring, high-status assignments and/or network opportunities because men colleagues or superiors refused to be alone, travel with and/or work closely with them. For political or religious reasons, many men avoid one-on-one contact with women colleagues in order to limit behavior that can be perceived as romantic or sexual in nature.<sup>64</sup> In practice, this means that women lawyers are denied equal opportunities to advance their careers and are subject to isolation and exclusion relative to their men peers. By denying women these opportunities, their men colleagues are signaling that they are not equals and/or that they are primarily sexual objects rather than colleagues. Because senior ranks are dominated by men, this practice is self-reinforcing; by limiting women's ability to benefit from informal network ties and mentoring, women's ability to reach senior ranks is limited. While this type of distancing is made by individual men, it harms women's careers in a systematic way. Organizations committed to inclusion should adopt a zero-tolerance policy toward these harmful practices and prioritize advancing more women into senior positions so as to normalize the presence of women in all arenas of professional interaction and engagement.<sup>65</sup>

<sup>62</sup> Kmec 2011.

<sup>63</sup> Ely, Stone & Ammerman 2014.

<sup>64</sup> Hewlett et al. 2010.

<sup>65</sup> Elsesser 2015.

## Advancement: Promoting Talented Leaders

By retaining talented women and people of color, you are creating a pipeline of talented leaders over time. Organizations with women and people of color in leadership are stronger and more effective. A diverse group of decision-makers is also more likely to recruit, hire and promote talented women and people of color. Women and people of color in leadership serve as visible examples that your organization supports and enables the careers of everyone.

### DO

**SPONSOR & MENTOR WOMEN**  
**INTRODUCE FAIR COMPENSATION**  
**ADVANCE WOMEN**

### DON'T

**CREATE IMPOSSIBLE HOOPS**  
**"THINK MANAGER/THINK MALE"**  
**ACCEPT TOKENISM**



#### HIGH QUALITY SPONSORSHIP & MENTORSHIP

Mentorship and sponsorship are essential for the careers of women and people of color. Mentors are available for advice and general guidance, while sponsors actively promote women's careers by advocating for their promotions, raises and high-profile assignments. Our respondents discussed the vital role that men and women mentors and sponsors had played in supporting their careers. Yet research finds that women tend to receive less

frequent and less valuable feedback than men.<sup>66</sup> This means that they have less information and support to propel their careers. While mentorship and sponsorship are important for women's careers, these programs and initiatives should not be viewed as remedial. An analysis of over two hundred studies found that there are no significant differences in men and women's confidence or leadership potential.<sup>67</sup> What does differ, however, are the opportunities and supports men and women receive at work – and strong mentors and sponsors can help address these gaps.



#### BONUSES & COMPENSATION

The gender compensation gap in law is substantial. Women lawyers working full time earn approximately 85% of men's earnings and women partners in top law firms face a pay gap of over 50%.<sup>68</sup> One common myth suggests that women earn less because they fail to negotiate as aggressively as men. Yet a review of over one hundred studies

on this topic concludes that gender differences in negotiations are small to non-existent.<sup>69</sup> Research on compensation among lawyers at the national level concludes that experience, credentials or work history *cannot account for the gender wage gap*.<sup>70</sup> The good news is that by implementing standardized and transparent processes for determining compensation and making managers and supervisors accountable for compensation outcomes, organizations can reduce or eliminate wage gaps. Accountability and transparency are the key ingredients here. A recent experimental study focused on a persistent racial gap in bonuses between Black and White executives at a large company. The researchers made performance ratings, raises and bonuses transparent to everyone in the firm and the racial disparity disappeared.<sup>71</sup>

<sup>66</sup> Correll & Simard 2016.

<sup>67</sup> Kling et al. 1999.

<sup>68</sup> Nelson et al. 2009; Rhode & Ricca 2015.

<sup>69</sup> Mazzei et al. 2014.

<sup>70</sup> Dinovitzer, Reichman & Sterling 2009.

<sup>71</sup> Castilla 2015. This is not to suggest that supervisors were consciously or deliberately allocating raises in an unequal manner. Rather, transparency and accountability reduce the likelihood that we make quick decisions or that we take cognitive shortcuts. By slowing down and relying on objective criteria, we make better, less biased decisions.

Empirically monitor salaries, bonuses and other forms of compensation over time to ensure that gaps do not exist and do not emerge and grow over time. Also ensure that women and minorities are well-represented on compensations committees as their contributions are associated with a significant reduction of pay disparities.<sup>72</sup>



### LEADERSHIP MATTERS

Perhaps the most important way to support inclusion and equity in your organization is to prioritize integrating your leadership ranks by gender, race and ethnicity. Visible, competent women and minority leaders transform their organizations. Leadership integration is associated with lower rates of discrimination and harassment, less pay inequity, greater opportunities for other women and minorities and higher rates of retention.<sup>73</sup> Despite overwhelming evidence that leadership diversity strengthens organizations, leadership recruitment and appointment tend to be the least formal, objective and transparent process within work organizations.<sup>74</sup> Commit to changing this – make sure that the search for and appointment of leaders is as rigorous and unbiased as all other practices within your organization. If you are *not* current and actively supporting the leadership trajectories of talented women and people of color in your organization, *begin today*. Also develop a short, medium and long-term plan to actively recruit talented individuals from outside the organization at every level. If you are hiring for a leadership position and there are no women or minority candidates in your pool, stop evaluating candidates and return to active recruitment. Build bridges between your organization and organizations that foster the careers of women and people of color so as to build a reputation as an inclusive organization. Experiment with policies like the NFL's Rooney Rule, which requires a diverse slate of candidates for all senior positions. When there are talented women and people of color in your hiring pool, they will get hired and promoted and your organization will be stronger as a result.

As you design inclusive advancement practices, beware of three common shortcuts that are likely to increase the role of bias in your organization.



### BIAS RISK #1

#### CREATING AN IMPOSSIBLE BAR

As with performance evaluations, research finds that women are held to exceptional standards when it comes to leadership style. Their underrepresentation increases their visibility, which requires them to walk a *tightrope of impression management*.<sup>75</sup> Women leaders must be seen as confident, ambitious and competitive as well as likeable and warm—a near impossible task. In fact, a recent study found that successful women in male-dominated professions—simply by virtue of their visibility and success—are viewed as “difficult to work with” and “unfriendly.”<sup>76</sup> Limiting the token status of women and minority leaders will reduce these biases. In the meantime, make sure you only consider objective information when evaluating leaders and that everyone is accountable for eliminating these pervasive biases.

<sup>72</sup> Williams & Richardson 2011. A recent study of the gender wage gap among senior leadership found that when women chair the compensation committee, gender-based wage differentials disappear (Cook, Ingersoll & Glass 2018).

<sup>73</sup> Cook, Ingersoll & Glass 2018; Roscigno 2019; Skaggs, Stainback & Duncan 2012.

<sup>74</sup> Research finds that the higher the proportion of men partners in a firm, the less likely women are to be promoted (Gorman 2006). This underscores the importance of fair, unbiased promotion practices and prioritizing integration of senior leadership ranks.

<sup>75</sup> Holmes 2006.

<sup>76</sup> Snyder 2014.

**BIAS RISK #2****THINK MANAGER/THINK (WHITE) MAN**

As noted above, we tend to misrecognize the skills and qualifications necessary for leadership with the characteristics *typical* of leaders. If all or most of our leaders are White men, we tend to assume that only White men have the skills and characteristics necessary for effective leadership. White men do not have a monopoly on talent and should not have a monopoly on opportunity. Another bias pitfall leads us to assume that women or people of color are better suited than others to lead during a crisis. Research finds that women and people of color are more likely to be appointed to leadership positions when a unit, team or organization is in crisis – a phenomenon termed “the glass cliff.”<sup>77</sup> Under these conditions, women and minority leaders are often set up to fail, given responsibility over a crisis that was not of their making and blamed if they are unable to fix the crisis in a short period of time.<sup>78</sup> Avoid this by relying only on objective criteria to evaluate candidates for leadership roles and holding decision-makers accountable for all appointment decisions.

**BIAS RISK #3****TOKENISM: “ONE AND DONE” OR “TWO-KENISM”**

Many organizations are guilty of pursuing a “one and done” or a “two-kenism” approach to inclusion in leadership—appointing one or at most two women or people of color and considering the job complete.<sup>79</sup> This approach is problematic because it places nontraditional leaders in highly visible token positions. Token status – the experience of being one of the only members of your group in a position – heightens stereotypes, increases visibility and intensifies performance pressures.<sup>80</sup> Under these conditions, non-traditional leaders are often unable to perform to their full potential. The hyper visibility they experience can lead to a “failure prevention” mindset where they become cautious, careful and conservative so as to avoid mistakes.<sup>81</sup> This is a sound strategy because token status also exaggerates or amplifies mistakes. When women—and particularly women of color—make mistakes, they are viewed as less competent and capable than men who make the same mistakes.<sup>82</sup> If your leadership team is unbalanced by gender or race/ethnicity, prioritize advancing talented women and minorities. In the meantime, implement decision-making by unanimous versus majority rule so as to maximize the influence and participation of underrepresented members of your leadership team.<sup>83</sup>

<sup>77</sup> Ryan et al. 2016.

<sup>78</sup> Cook & Glass 2014.

<sup>79</sup> Change et al. 2019. Token pressures are greater for women of color due to their hyper underrepresentation in professional and leadership roles (Watkins, Simmons & Umphress 2019).

<sup>80</sup> Kanter 1977; Wingfield 2013.

<sup>81</sup> Fine 2010.

<sup>82</sup> Rosette & Livingston 2012.

<sup>83</sup> Karpowitz & Mendelberg 2014.

# Best Practices For Individuals

## ***How can individuals reduce bias and support the advancement of women and people of color in Utah's legal profession?***

Discrimination represents the failure of organizational policies and practices to limit the role of bias in shaping outcomes and opportunities.<sup>84</sup> While systematically restructuring organizational policies and practices is vital, we all have a responsibility to support women and people of color at work. Each of us can and should serve as *bias interrupters*.<sup>85</sup> Bias interrupters are aware of common ways bias shapes everyday interactions and committed to disrupting it when it occurs. Bias interrupters raise the bar in their organizations by holding peers and colleagues accountable and by signaling to their women and minority colleagues that they are committed to supporting their success.

In this section we provide some tools to help guide your efforts to:

- Gain awareness of bias
- Engage productively with colleagues to minimize bias
- Intervene productively to disrupt bias



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<sup>84</sup> See “Best Practices for Organizations” in this report for guidance on organizational strategies for reducing bias in your organization.

<sup>85</sup> The Center for WorkLife Law at UC Hastings College of the Law has created a tool kit to support bias interrupters. To learn more about those resources, visit their website at: <https://biasinterrupters.org>.

## Step 1: Gain Awareness of Bias

Scholars have identified several common patterns of workplace bias. These patterns are discussed earlier in the report and defined in [Appendix 3](#). We include them here as well:

- Prove-it-Again Bias
- Tightrope Bias/Agency Penalties
- Motherhood Penalties
- Lack of Fit Bias
- Distancing from Colleagues
- Flexibility Stigma

These biases are often implicit or subtle. Without awareness of these patterns, you may be unaware of them even when they occur.<sup>86</sup> There are many resources to help guide your effort to become more aware of the ways in which gender and racial bias shape our views, assumptions, stereotypes and interactions. These include books, online resources and online tools to help you gain a better understanding of how bias shapes the climate of your own organization.<sup>87</sup>

Another important way of gaining awareness is to build trusting relationships with your women and minority colleagues. As you develop these relationships, avoid asking your colleagues to educate you on gender or racial bias generally. Instead, seek to develop relationships that allow open communication about their personal experiences and challenges. The most important role for allies is to listen to others' experiences with *focus, sincerity, empathy* and *humility*. When colleagues share their experiences of bias, believe them and do not attempt to minimize or dismiss their lived experience. Do not assume that because you have not experienced bias personally that bias is not a problem for others. Research finds that effective allies are aware of the personal experiences of their colleagues and bring a strong sense of fairness to bear on their actions and priorities.<sup>88</sup>

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<sup>86</sup> Research finds that both men and women accurately describe biased interactions, but men are less likely than women to describe the behavior as biased, especially if it is subtle or benevolent or reinforces common stereotypes (Becker & Swim 2011).

<sup>87</sup> We provide a list of some resources at the end of this document to help guide your efforts.

<sup>88</sup> Johnson & Smith 2018.

## Step 2: Engage Productively to Minimize Bias

As you seek productive engagement with colleagues on issues of workplace bias, remember that true allyship is about *partnership* and *collaboration*.<sup>89</sup> Allyship is also on a continuum from awareness to advocacy. Before you can intervene productively to disrupt bias, you must first learn to engage productively with colleagues who may be experiencing bias.

There are several strategies to engage productively with colleagues. Productive engagement means knowing the range of opportunities and challenges your colleagues are experiencing and communicating those challenges to others. Here we offer three critical ways that you can begin your engagement efforts:

### SUPPORT INCLUSIVE POLICIES

By learning about the challenges your colleagues face, you can lend your support to policies that work. These include flexible work policies, inclusive recruitment strategies and other equity initiatives. Make sure there are always talented women and minority candidates in the pool of candidates being considered for jobs, bonuses and leadership roles. Be open about your commitment to inclusion and the benefits to your organization of equitable practices. When it comes to policies that support work-life balance, be clear that these policies benefit all workers and publicly prioritize your own commitment to flexibility. Fathers and non-parents can help relieve some of the stigma associated with motherhood by taking advantage of any policies that support workplace flexibility and/or work-life balance.<sup>90</sup>

### MENTOR & SPONSOR TALENTED COLLEAGUES

Mentors and sponsors have a critical role to play in supporting the careers of women and people of color.<sup>91</sup> Good mentors and sponsors advocate for opportunities, highlight accomplishments, recommend colleagues for high quality assignments and privately and publicly recognize colleagues' contributions. Good mentors and sponsors do not assume which opportunities their colleagues desire, they ask. And they encourage their senior colleagues to do this important work as well. Remember that your job is not to speak for your colleagues but to amplify their voices, talents and leadership. Ask good questions, seek feedback and admit mistakes.

### SEEK PARTNERSHIPS

As you gain awareness of the challenges your colleagues face, seek to form partnerships with colleagues so as to stimulate creative problem solving. Host informal meetings, workshops and luncheons, attend meetings of women and/or minority lawyers, engage with women and minority industry leaders and participate in women and minority law school groups. In each setting, seek to form diverse and inclusive partnerships to support your efforts to reduce bias. Share influence, knowledge, information and resources across these groups to better inform yourself about and arm your organization with best practices.

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<sup>89</sup> Research finds that most of us suffer from bias blind spot, the tendency to assume we are less biased than others (Scopelliti et al. 2015). This blind spot leads us to (1) underestimate our own biases; (2) ignore or disregard advice of peers or experts; and (2) overestimate how well we and our organizations are doing when it comes to bias. Be aware of this blind spot so you can avoid it.

<sup>90</sup> Flexible work arrangements reduce work-life conflict, improve worker health, increase work commitment, improve productivity and raise job performance (Chung & van der Lippe 2018). Remind your colleagues of these benefits.

<sup>91</sup> For an excellent analysis of the benefits, pitfalls and possibilities of cross-group mentoring, see Martinez-Cola (2020).

## Step 3: Intervene Productively to Interrupt Bias

All of us have a vital role to play in disrupting bias though men may be particularly influential in these efforts. Research finds that men's active engagement in bias reduction is viewed as more legitimate and credible and tends to legitimize the experiences of underrepresented colleagues.<sup>92</sup> And while women and people of color tend to incur penalties for advocating for equity and inclusion, White men do not.<sup>93</sup>

There are several common strategies for disrupting bias in everyday interactions, from meetings about hiring and performance evaluations to discussions about assignments and compensation. Armed with an awareness about common patterns of bias and strong productive relationships with colleagues, we are all better able to: (1) recognize subtle bias when it occurs; and (2) intervene productively so as to minimize bias in the moment. Below we offer a handful of common scenarios of everyday bias and simple suggestions for how to disrupt bias effectively.

### SCENARIO #1

#### DISRUPTING AGENCY PENALTIES

**Your colleague Maria is frequently interrupted by men colleagues when she speaks in meetings and/or she is accused of being too "passionate" or "assertive" about her ideas.<sup>94</sup>**

Bias interruption strategies:

- Never interrupt women. If you need clarification, wait until the speaker has finished before asking for it and immediately turn the floor back to the speaker.
- Ask the interrupter to wait until your colleague is done speaking.
- Redirect discussions about Maria's style to focus on her ideas and performance.
- Advocate for decision making by consensus to ensure that all members of the team are able to contribute equally.<sup>95</sup>

### SCENARIO #2

#### DISRUPTING MOTHERHOOD BIAS

**A colleague suggests not giving a high-quality opportunity to your colleague Maya because she recently had a baby and may not want the extra responsibility.**

Bias interruption strategies:

- Ask your colleague if they have discussed Maya's goals and preferences. If the answer is no, make it clear that the group should not base decisions on subjective and potentially incorrect assessments of Maya's preferences.
- Remind your colleagues that Maya is competent and committed and has earned this opportunity.
- Ensure that Maya—and all colleagues—receive assignments they deserve irrespective of family status.

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<sup>92</sup> Cihangir et al. 2014; Drury & Kaiser 2014.

<sup>93</sup> Johnson and Heckman 2016.

### SCENARIO #3

#### DISRUPTING SOCIAL & NETWORK BIAS

Your colleagues plan a meeting/lunch/dinner/golf/ski outing but do not invite your women colleagues.<sup>96</sup>

Bias interruption strategies:

- Invite your women colleagues to participate in (and help organize<sup>97</sup>) any and all work-related functions, including functions with clients, customers or colleagues.
- If women colleagues are not welcome, cancel the event or let your colleagues know why you will not attend.

### SCENARIO #4

#### DISRUPTING SUBJECTIVE ASSESSMENT BIAS

When evaluating job candidates, your colleague Elizabeth questions whether Jasmine, one of the only women of color applicants, is a “good fit” for the organization.

Bias interruption strategies:

- Let Elizabeth know you think Jasmine is an excellent candidate and ask her which specific criteria required for the job is lacking in Jasmine’s record.
- Ensure that the hiring committee includes women and people of color.
- Ask Elizabeth and other members of the committee how your organization needs to change so that excellence candidates like Jasmine could be a “good fit.”
- Encourage Elizabeth to use only objective criteria included in the job advertisement and to apply that criteria to all candidates equally.

### SCENARIO #5

#### DISRUPTING DISTANCING BIAS

Your colleague Jim avoids close mentoring or sponsorship relationships with women so as to “protect” them and himself from gossip.

Bias interruption strategies:

- Encourage all of your peers, including Jim, to mentor and sponsor women.
- Frequently discuss the benefits of mentorship for your own career and how valuable women and people of color are to your organization.
- Let Jim know that avoiding women colleagues is harmful to women’s advancement and violates your organization’s goals of equity.
- Suggest specific promising candidates to Jim and offer to facilitate an introduction for the purposes of mentoring or sponsorship.

<sup>99</sup> Research finds that most of us suffer from bias blind spot, the tendency to assume we are less biased than others (Scopelliti et al. 2015). This blind spot leads us to (1) underestimate our own biases; (2) ignore or disregard advice of peers or experts; and (2) overestimate how well we and our organizations are doing when it comes to bias. Be aware of this blind spot so you can avoid it.

<sup>90</sup> Flexible work arrangements reduce work-life conflict, improve worker health, increase work commitment, improve productivity and raise job performance (Chung & van der Lippe 2018). Remind your colleagues of these benefits.

<sup>91</sup> For an excellent analysis of the benefits, pitfalls and possibilities of cross-group mentoring, see Martinez-Cola (2020).

<sup>96</sup> Scholars refer to “benevolent sexism” as behaviors that aim to “protect” women but actually limit their opportunity. These include avoiding developing close relationships with women colleagues, chivalrous or protective behaviors that limit women’s assignments, placing women (or mothers) on a pedestal, and telling women they are “good girls” or calling them belittling names such as “pumpkin” or “honey” (Glick 2013).

<sup>97</sup> However, avoid asking or expecting women (especially women of color) colleagues to do office “housework”, including taking notes, planning parties, or hosting or organizing social events on their own (Tulshyan 2018).

## SCENARIO #6

### DISRUPTING HOSTILE WORKPLACE BIAS

Your colleague Bill makes a racist joke about immigrants. Your colleague Maria asks him to avoid such humor and Bill accuses her of being “too serious” or lacking a sense of humor.

Bias interruption strategies:

- Don’t wait for your women or minority colleagues to correct this type of behavior. Be the first to speak up to let Bill know you are uncomfortable with racist or sexist humor and anecdotes.
- Let Bill know that maintaining a respectful atmosphere in the workplace has nothing to do with one’s sense of humor.
- Follow up with Maria privately to make sure she is okay and strategize together about how you will address such incidents in the future.

## SCENARIO #7

### DISRUPTING LACK-OF-FIT BIAS

You arrive in court with your co-counsel Gabrielle and opposing counsel mistakes her for your paralegal or clerk.

Bias interruption strategies:

- Pre-empt assumptions by introducing Gabrielle as your co-counsel.
- Don’t wait for Gabrielle to correct this error; speak up and let opposing counsel know that Gabrielle is a talented and valued member of the legal team.
- Ask opposing counsel why they assumed Gabrielle was not co-counsel.
- Let Gabrielle take the lead in ways that demonstrate her talent and capability.

## Suggested Resources for Gaining Awareness of Bias

Catalyst’s MARC (Men Advocating Real Change) Program: [www.catalyst.org/marc](http://www.catalyst.org/marc)

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# Appendix 1: Survey Overview

# Survey Structure<sup>98</sup>

## INTRODUCTION

This section of the survey explained the purpose of the survey, as well as a confidentiality plan. In this section, participants indicated if they were willing to participate in the study.

## PROFESSIONAL STATUS

The first part of the survey asked questions about participants professional status and employment type.

## MENTORING & SPONSORSHIP

This section asked questions related to participants professional experiences, mentors, sponsors, and assignments.

## PERCEPTION OF COLLEAGUES

This section focused on asking participants about how they are viewed and treated by their colleagues and employer.

## CLIMATE

The questions in this section focused on the culture and climate of participants' workplace.

## EVALUATION & COMPENSATION

This section focused on participants' experience with evaluation, compensation, and promotion at their place of work.

## PARENTHOOD

This section focused on asking parents about their experience in their place of work. It also addressed participants' experience with alternative schedules.

## DIVERSITY IN THE WORKPLACE

This section asked participants about their experience with diversity, inclusion, and equity in the workplace.

## HARASSMENT & DISCRIMINATION

The questions in this section asked participants about their experiences related to harassment and discrimination at work.

## DEMOGRAPHICS

This section included questions about key demographics for survey participants such as gender identity, race/ethnicity, and sexual identity.

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<sup>98</sup> The 2020 survey included questions from the 2010 WLU survey and the 2018 ABA national survey. To access the questions from the national survey, the research team signed a non-disclosure agreement prohibiting our sharing specific questions with others outside of the research team. Therefore, we do not include specific survey questions here.

# Respondent Characteristics

Table 1: Professional Characteristics

## PLACE OF EMPLOYMENT

Law firm .....	44%
Government .....	24%
Self-Employed .....	13%
In-house counsel .....	11%
Non-profit .....	4%
Other legal .....	2%
Other non-legal .....	2%

## CURRENT POSITION

Lawyer .....	87%
Judge .....	4%
Judicial law clerk .....	1%
Magistrate Judge or other judicial worker .....	0%
Other .....	7%
Other legal/support role .....	1%

## CURRENT POSITION AS A LAWYER

Senior/equity partner .....	31%
Staff attorney .....	11%
Senior associate .....	8%
Associate or Ass't general counsel .....	8%
General counsel .....	7%
Mid-level associate .....	6%
Junior associate .....	6%
Of counsel .....	5%
Junior/income partner .....	4%
Other .....	15%

## TYPE OF LAW FIRM

Local firm .....	64%
Regional firm .....	20%
National firm .....	8%
International firm .....	6%
Other .....	1%

## EMPLOYMENT STATUS

Working full-time .....	83%
Working part-time .....	8%
Retired .....	3%
Other .....	5%

Table 2: Demographic Characteristics

**GENDER**

Woman .....	39%
Man .....	58%
Non-binary/Third gender .....	<1%
Another identity .....	<1%
Prefer not to say .....	3%

**RACE**

White .....	90%
Latinx/Hispanic .....	4%
Black/African American/African .....	1%
East Asian .....	2%
Middle Eastern/North African .....	<1%
Native American/Alaskan Native .....	<1%
Other .....	2%
Pacific Islander or Native Hawaiian .....	1%
South Asian .....	1%
Southeast Asian .....	1%

**RELIGION**

Latter-day Saint (Mormon) .....	57%
No religion .....	23%
Catholic .....	4%
Other Protestant .....	1%
Other religions combined .....	8%
Prefer not to answer .....	7%

**POLITICAL AFFILIATION**

Democrat .....	33%
Republican .....	23%
Independent .....	32%
Something else .....	5%
Prefer not to answer .....	6%

**SEXUAL IDENTITY**

Straight .....	92%
LGBTQ .....	8%

**FAMILY CARE RESPONSIBILITIES**

Dependent Children .....	51%
Elder Care .....	10%
Both .....	11%
Not applicable .....	25%
Other .....	3%

**OTHER CHARACTERISTICS**

First generation college graduate .....	14%
First generation with a professional career .....	27%
Currently married or living with a partner .....	85%
Have a visible disability .....	6%
Have children .....	80%

# **Appendix 2:**

# **Characteristics of Interview Respondents**

	Age	Parental Status	Political Affiliation	Religious Affiliation	Professional Status
INTERVIEW 1	40	2 CHILDREN	DEMOCRAT	CATHOLIC	SMALL FIRM
INTERVIEW 2	33	1 CHILD	LIBERAL	NONE	IN-HOUSE
INTERVIEW 3	39	2 CHILDREN	DEMOCRAT	CATHOLIC	LARGE FIRM
INTERVIEW 4	36	2 CHILDREN	DEMOCRAT	CATHOLIC	LARGE FIRM
INTERVIEW 5	36	4 CHILDREN	DEMOCRAT	LDS	ACADEMIC
INTERVIEW 6	48	2 CHILDREN	DEMOCRAT	METHODIST	SOLO PRACTITIONER
INTERVIEW 7	36	1 CHILD	LIBERAL	BUDDHIST	GOVERNMENT
INTERVIEW 8	46	NO CHILDREN	DEMOCRAT	PROTESTANT	GOVERNMENT
INTERVIEW 9	45	2 CHILDREN	DEMOCRAT	PROTESTANT	GOVERNMENT
INTERVIEW 10	42	4 CHILDREN	INDEPENDENT	NONE	GOVERNMENT
INTERVIEW 11	56	NO CHILDREN	INDEPENDENT	CATHOLIC	LARGE FIRM
INTERVIEW 12	37	2 CHILDREN	DEMOCRAT	AGNOSTIC	MIDSIZE FIRM
INTERVIEW 13	55	2 CHILDREN	NONE	NO DENOMINATION	MIDSIZE FIRM
INTERVIEW 14	36	2 CHILDREN	NONE	LDS	SOLO PRACTITIONER
INTERVIEW 15	52	2 CHILDREN	DEMOCRAT	CATHOLIC	SMALL FIRM
INTERVIEW 16	39	2 CHILDREN	DEMOCRAT	CATHOLIC	GOVERNMENT
INTERVIEW 17	57	NO CHILDREN	DEMOCRAT	AGNOSTIC	SOLO PRACTITIONER
INTERVIEW 18	29	NO CHILDREN	OTHER	LDS	SMALL FIRM
INTERVIEW 19	29	NO CHILDREN	DEMOCRAT	LDS	NON-PROFIT
INTERVIEW 20	67	NO CHILDREN	INDEPENDENT	LDS	GOVERNMENT
INTERVIEW 21	61	NO CHILDREN	N/A	METHODIST	SOLO PRACTITIONER
INTERVIEW 22	34	4 CHILDREN	INDEPENDENT	LDS	SOLO PRACTITIONER
INTERVIEW 23	42	4 CHILDREN	REPUBLICAN	LDS	GOVERNMENT
INTERVIEW 24	42	5 CHILDREN	INDEPENDENT	LDS	SMALL FIRM
INTERVIEW 25	51	3 CHILDREN	LIBERAL	LDS	GOVERNMENT
INTERVIEW 26	65	5 CHILDREN	INDEPENDENT	LDS	LARGE FIRM
INTERVIEW 27	58	3 CHILDREN	DEMOCRAT	PROTESTANT	SOLO PRACTITIONER
INTERVIEW 28	53	1 CHILD	CONSERVATIVE	LDS	SMALL FIRM
INTERVIEW 29	41	3 CHILDREN	INDEPENDENT	LDS	SOLO PRACTITIONER
INTERVIEW 30	49	2 CHILDREN	LIBERAL	LDS	GOVERNMENT
INTERVIEW 31	27	3 CHILDREN	INDEPENDENT	LDS	MIDSIZE FIRM
INTERVIEW 32	47	2 CHILDREN	LIBERAL	PROTESTANT	IN-HOUSE
INTERVIEW 33	40	2 CHILDREN	LIBERAL	N/A	SOLO PRACTITIONER
INTERVIEW 34	46	5 CHILDREN	DEMOCRAT	LDS	LARGE FIRM
INTERVIEW 35	46	2 CHILDREN	DEMOCRAT	N/A	GOVERNMENT
INTERVIEW 36	48	2 CHILDREN	DEMOCRAT	LDS	CONSULTANT
INTERVIEW 37	46	2 CHILDREN	N/A	LDS	GOVERNMENT
INTERVIEW 38	61	3 CHILDREN	OTHER	BAPTIST	GOVERNMENT
INTERVIEW 39	36	NO CHILDREN	N/A	N/A	NON-PROFIT
INTERVIEW 40	40	NO CHILDREN	N/A	N/A	LARGE FIRM
INTERVIEW 41	35	NO CHILDREN	DEMOCRAT	N/A	LARGE FIRM
INTERVIEW 42	37	NO CHILDREN	N/A	LDS	IN-HOUSE
INTERVIEW 43	33	2 CHILDREN	N/A	N/A	LARGE FIRM
INTERVIEW 44	40	7 CHILDREN	REPUBLICAN	LDS	SOLO PRACTITIONER
INTERVIEW 45	43	2 CHILDREN	N/A	LDS	LARGE FIRM
INTERVIEW 46	32	1 CHILD	N/A	N/A	N/A
INTERVIEW 47	32	3 CHILDREN	DEMOCRAT	LDS	SOLO PRACTITIONER

# Appendix 3: Common Patterns of Bias

### **AGENCY PENALTIES**

These penalties refer to the negative career outcomes that penalize women for engaging in behaviors typically associated with men. If women are assertive, they may be viewed as “too emotional” or “bitchy”, resulting in reputational penalties for behavior for which men are often rewarded.

### **DISTANCING BIAS**

Distancing refers to the tendency for men to socially distance from women colleagues for political or religious reasons or due to benevolent sexism (i.e., belief that men should protect, idealize or otherwise show gendered affection for women in the workplace). Distancing can include avoiding social events, one-on-one meetings, or mentoring or sponsorship relationships with women. This bias can contribute to a lack of equity and a loss of opportunities for career advancement and support.

### **FLEXIBILITY STIGMA**

This stigma refers to biases against those who use various types of flexible work arrangements. Typically, this stigma applies to mothers who desire flexible arrangements to provide needed family care. The stigma tends to associate such workers with a lack of job commitment, competence or devotion.

### **LACK OF FIT BIAS**

Women and people of color are often viewed as lacking the fit for a successful professional career. When women and people of color are underrepresented in careers, they are often assumed to fall short of the “ideal worker.” They are often mistaken for lower status professionals, including staff, paralegals, secretaries or clerks and may not be given the equivalent amount of respect that others enjoy.

### **MOTHERHOOD PENALTIES**

These penalties refer to biases that women confront after they have children. Mothers are often viewed as less competent and committed to their careers. As a result, they may lose out on highquality assignments, promotions and bonuses. They may also be relegated to “mommy track” schedules that take them out of the running for senior positions.

### **PROVE-IT-AGAIN BIAS**

The necessity of women and people of color to prove themselves again and again across the career. Due to negative gender and racial stereotypes about competence, leadership capability and work commitment, women and people of color are often assumed to lack the qualities necessary for success. To overcome these stereotypes, women and people of color perceive that they must continually go above and beyond to demonstrate their abilities.

### **TIGHTROPE BIAS**

Pressures that women face to behave in feminine ways while also demonstrating their fitness for careers that reward stereotypically masculine behaviors, including aggression, competition, selfpromotion and assertiveness. Women are expected to be nice, warm and likeable yet these qualities often disqualify them for jobs, assignments or roles that require tough, aggressive or assertive qualities. Yet when women demonstrate these qualities they are penalized. This means they must walk a tightrope between being not too feminine or too masculine.