


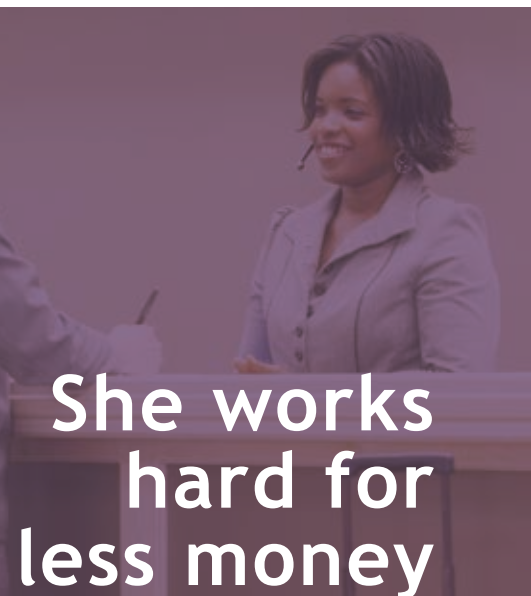
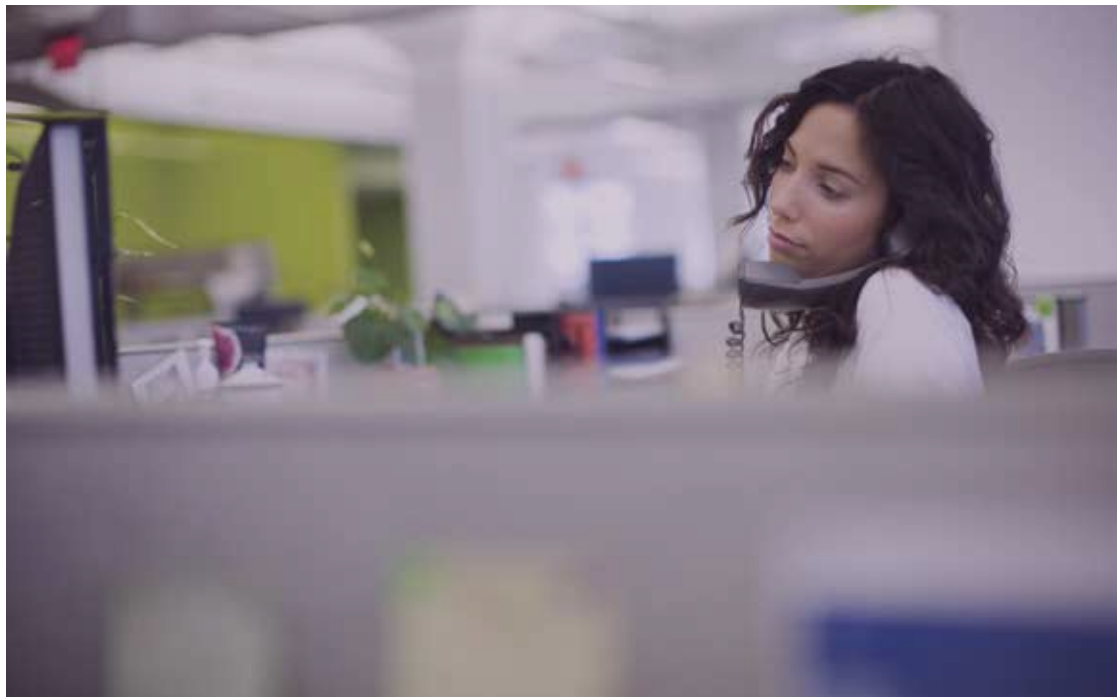


WLJ

WOMEN LAWYERS JOURNAL



2015
VOL. 100
NO. 1



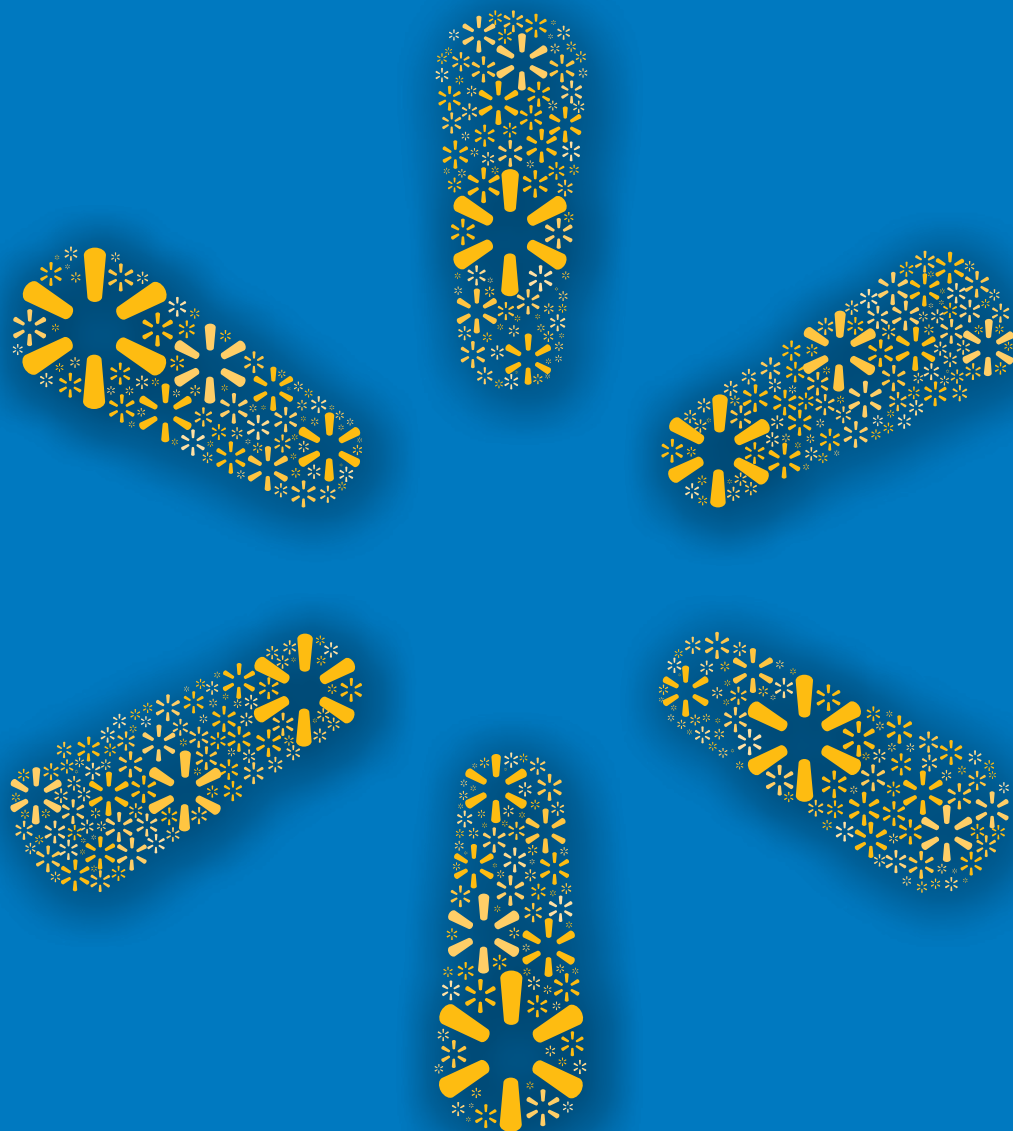
**She works
hard for
less money**

ALSO IN THIS ISSUE
**Confirmation bias:
Seeing is believing**

**Is your website
looking a little stale?**



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FEATURES

Cover Story: 10

She works hard for less money Recent Increases in wage and hour protections for female-dominated jobs

Despite female workers' increased participation in the labor force, they continue to be more likely than their male counterparts to live in poverty and face economic barriers to advancements in compensation and occupation. This disparity impacts not only the worker as an individual, but her entire family. By Maria Lewis and DeMaris Trapp

Confirmation Bias: It has to be believed to be seen 19

Confirmation bias is the tendency of humans to seek or notice only information that corroborates, rather than goes against, what we already believe. Denigrating members of the out-group (people with whom we do not identify) strengthens the bonds of the in-group (those with whom we do identify). By John McCabe

Using social media to raise your professional profile 25

According to the Association for Corporate Counsel, 67 percent of its members refer regularly to the Internet to research potential outside counsel. To keep them coming back, keep your content fresh. By Kimberly Alford Rice

DEPARTMENTS

About NAWL 5

A note from Executive Editor Jennifer M. Guenther 6

Be the voice of courage for others

It can be intimidating to place yourself in a role where someone may scoff or suggest you are not good enough. But doing so may provide courage to the next person.

A letter from NAWL President Lisa M. Passante 8

Play your soundtrack *LOUD!*

The strong female vocalists of the '70s — Carole King, Joni Mitchell, Carly Simon — helped form this baby boomer's view of the world.

Member News 28

NAWL members making headlines

Cara C. Tonucci was appointed to the Town of Glastonbury Town Council. David Yellen and JoAnne Epps were named to The National Jurist's 2014 List of 25 Most Influential People in Legal Education. Kristin D. Sostowski was selected by NJBIZ, the New Jersey weekly business newspaper, as one of its "Forty Under 40" for 2014.

NAWL Recognition 30

Institutional Members
2015 Sponsors
New Members
Networking Roster

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Women Lawyers Journal (ISSN 0043-7468)
is published quarterly by the National Association
of Women Lawyers (NAWL)®.



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Be the voice of courage for others

Leaders are found at all levels and in all areas of our lives

By Jennifer M. Guenther

It can be intimidating to place yourself in a role where someone may scoff or suggest you are not good enough. But doing so may provide courage to the next person.

THROUGHOUT MY LIFE, I've been blessed to find amazing women mentors when I least expected them. Some mentoring was fleeting, and they may not have even known the impact of their words. In junior high, my algebra teacher said unequivocally to the entire class: "The idea that girls are not good in math, or that

boys are always better at math, is wrong. I am good at math." It was an awakening moment. I realized two things: first, that I had been told my whole life girls cannot do math and science well; and second, that it is OK to embrace those things that you were good at. I, too, was good at math and that was OK.

In college, I always made a point of going to a professor's office hours at least once for each of my core classes. I had very few female professors and during a visit with the only female professor in my major, she pointed out that fact. I took notice. In law school, a guest professor who was also a partner in a law firm and a mother of two provided a counter to the numerous articles found in the legal magazines on campus on how women were leaving the legal profession because they could not balance family with work. And then, of course, there were the many attorneys I have met over the course of my career who have provided guidance and encouragement.

As I look for the similarities of these women who have been so influential in my life and in my career, whether they were aware of it or not, I see one continuous thread that stands out. Each of these women challenged the so-called "norms" that had become embedded in society at that point in time. Each one provided a voice of courage for those of us who were not yet brave enough to speak

up – and in doing so – set an example for the generations that followed.

There are many books and courses on leadership that focus on climbing the corporate or law firm ladder. Leaders are often defined as those with ambition who strive to be in front. But we must not forget that leaders are found at all levels and in all areas of our lives. A good leader strives to raise up not only themselves, but all those around them. For some, this is easy. For others, this may come in fleeting moments of inspiration. Rosa Parks would not have been defined as a leader before refusing to give up her seat on the bus, but at that moment – whether she intended to be or not – she was a strong leader who inspired others to rise up. Just as my math teacher, new to the school and department, encouraged me to rise up above the social norms.

Leadership is sometimes easy, but more often requires courage. It can be lonely and a little scary to be the first to step forward and challenge a norm, or to suggest a change in business relationships, or to pursue a new client. It can be intimidating to place yourself in a role where someone may scoff or suggest you are not good enough. But doing so, even in the smallest of instances, may provide courage to the next person, and the next person, and so on, to allow change to occur. A small pebble can cause the side of an entire mountain to come down in a landslide. There are few women we see as strong who do not have a deep foundation of supporting pebbles.

It is for this reason that the National Association of Women Lawyers and organizations like it are so important. Small moments or a single conversation can provide someone with the courage to start the landslide. It is the sharing of ideas and the challenging of our beliefs, no matter how ingrained, which can provide the courage and the forum for someone to show that moment of leadership or to make that connection. The voice of a few strong leaders can make a difference. But the voices of a thousand will cause a deafening roar.



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Play your soundtrack **LOUD!**

*Strong female vocalists of the '70s
made their mark on this baby boomer*

By Lisa M. Passante

**'I still wonder what
I want to be when I
grow up, how I will
change the world,
and what lies ahead.'**

I HAVE A CONFESSION TO MAKE. I have a fairly long commute to my office, and my current company of choice is the Sirius XM '70s station. The decade of my junior high, high school and college years. To the extent that certain music is the soundtrack of our lives, for me '70s music is the soundtrack of a time when anything was possible, everything was ahead of me and there were no limits.

I realize that some of you reading this – including some of you who are well into your career – may not have been born when that music was in the Top 40. It was a real mixed bag. There was the music of strong women with powerful lyrics. Even now, who doesn't feel formidable when she hears Gloria Gaynor belting "I Will Survive"

or Sister Sledge proclaiming "We are family ... I got all my sisters with me." There were the balladeers and folk artists whose voices are still recognizable in an instant after all these years ... Carole King, Joni Mitchell, Carly Simon. There were brilliant male singer-songwriters at their early best: Billy Joel, Elton John, James Taylor. Even if some (well, most) of the disco sound didn't rise to the level of the soaring Donna Summer, the dance music was just plain fun (ABBA or the Village People anyone?), the soul was smooth and the classic rock bands were at their wailing best.

I realize that statistically I'm well into the latter half of my career. But you know what? I don't feel that way, and listening to the sounds of my teenage years reminds me of that feeling. I still wonder what I want to be when I grow up, how I will change the world and what lies ahead. Pretty much the same way I felt when my driver's license was brand-new and those same songs kept me company in the car.

One of the many things I love about NAWL is that we never stop imagining the possibilities and moving forward to open doors. We have been changing the world for 116 years, and we will not stop. When I am at a NAWL event, I am reminded that for us, collectively, all things still are possible. We share an optimism and spirit that we can never abandon, whether we've been practicing for one year or 50 years.

I hope that you have a soundtrack of your life that raises your spirits and makes you feel powerful. If you do, play it loudly, play it often and carry that spirit with you to the next NAWL event!



Lisa M. Passante is vice-president and associate general counsel at Thomson Reuters, where she serves as the senior U.S.-based legal adviser to the Intellectual Property & Science business unit. She can be reached at lisa.passante@thomsonreuters.com.



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Recent Increases in Wage and Hour Protections for Female-dominated Jobs

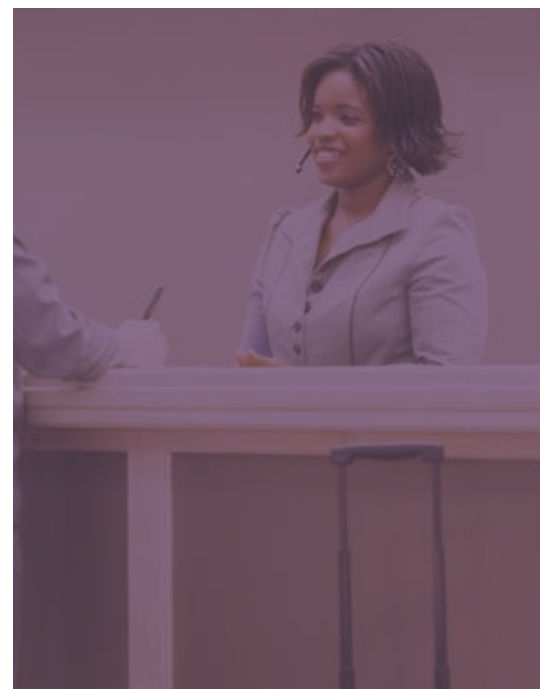
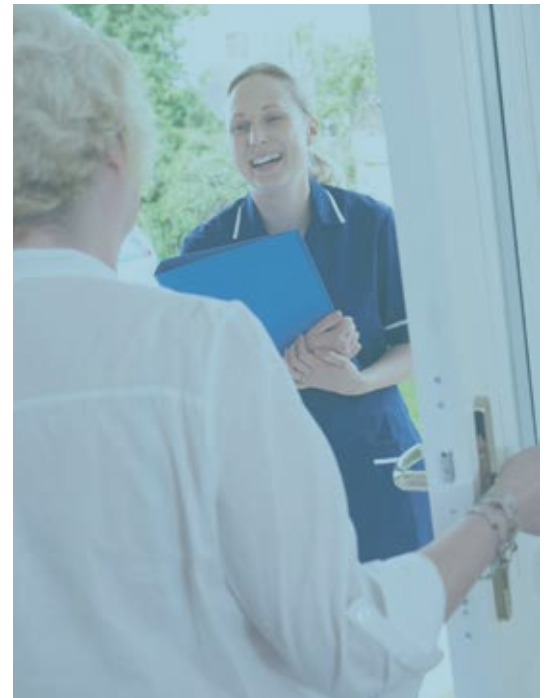
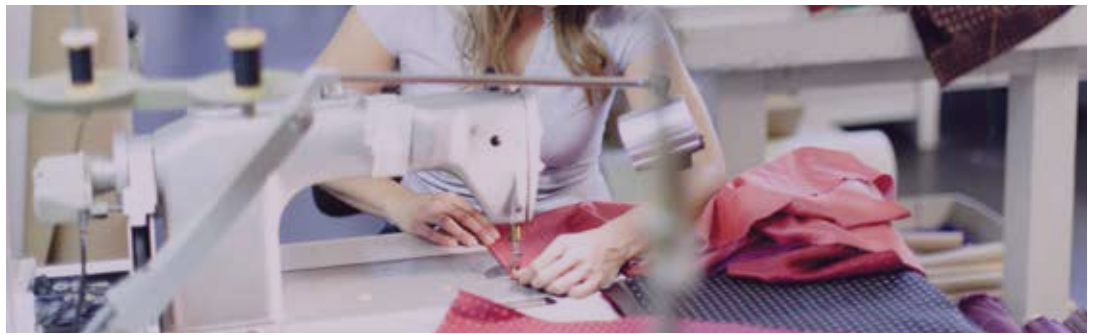
By Maria Lewis and DeMaris Trapp

THE MOST RECENT U.S. DEPARTMENT OF LABOR STATISTICS report that women increasingly are becoming the primary breadwinners in their families. And single-mother families, in which the woman is the sole breadwinner, are on the rise.¹ Despite female workers' increased participation in the labor force, they continue to be more likely than their male counterparts to live in poverty and face economic barriers to advancements in compensation and occupation. This disparity impacts not only the worker as an individual, but her entire family. The DOL reports that the wage gap and other gender disparities in the workplace cause a female worker, and consequently her family, to lose out on a significant amount of wages over her lifetime.² Over the past few

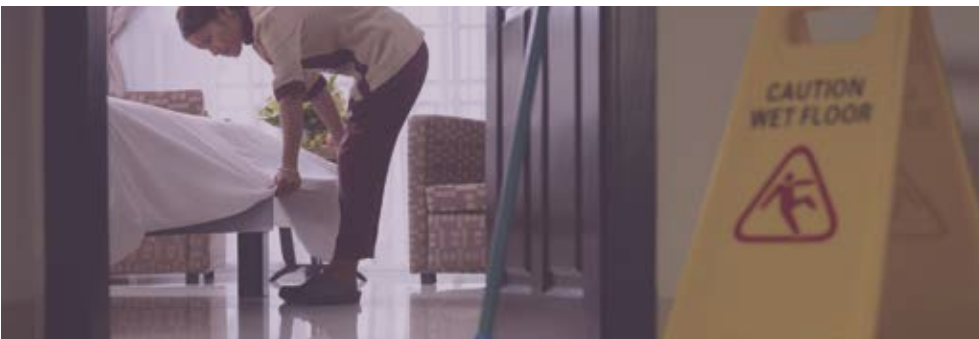


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In September 2013, President Obama and the DOL announced the Home Care Final Rule



Although female representation in the workforce evidently has become less of an issue, disparate wages and lower lifetime earnings overall for women continue to plague the U.S. workforce.

years, there has been increased advocacy aimed at addressing the unfair treatment of female workers, which has resulted in some advancement toward eliminating wage disparity.

THE DEVELOPMENT OF WOMEN IN THE WORKFORCE

In the U.S., the workforce saw a significant increase in female workers during and after the Second World War (1939 to 1945). Since that time, society has struggled with ensuring that women receive fair and equal treatment in the workplace as compared to men. One of the first federal protections passed into law with the goal of benefiting women workers was the Equal Pay Act of 1963 (Pub. L. 88-38). When the EPA was signed into law, women were earning an average of 59 cents on the dollar compared to

Home health aides,
personal care
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possess mandated
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that require skill
and training.

men. Since 1963, Congress has passed additional laws with a goal of increasing fairness for working women, including Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (which includes sex as a protected category against unlawful discrimination), the Pregnancy Discrimination Act of 1978 (an amendment to Title VII) (prohibiting sex discrimination on the basis of pregnancy), and the Family Medical Leave Act of 1993 (Pub. L. 103-3) (which provides employees job-protected, unpaid leave for qualified medical and family reasons, such as pregnancy or personal or family illness). More than two-thirds of U.S. states³ also have passed workplace protection laws that, in part, protect women workers from unfair treatment with respect to job opportunities, wages and career advancement.

To be sure, critics have argued over the years that these laws would have the unintended effect of making female workers more expensive and less desirable, but women currently comprise 47 percent of the total U.S. labor force and are expected to increase to 51 percent by 2018.⁴ Although female representation in the workforce evidently has become less of an issue, disparate wages and lower lifetime earnings overall for women continue to plague the U.S. workforce. (For women of color, these disparities are larger.) Even when comparing similar educational levels and job positions, women are still earning only about 81 cents on the dollar compared to men, which results in hundreds of thousands of dollars in lost wages for those women.⁵

FEMALE-DOMINATED FIELDS: A BARGAIN DEAL

Concerning lower lifetime earnings of women overall, one problem is that female-dominated jobs and fields tend to pay less overall than those traditionally dominated by men. This disparity is likely a carryover, at least in part, from the pre-EPA era, during which time it was lawful for an employer to pay women less than men to perform the same job. Although the EPA required employers to pay equal wages to men and

women, the law could not control employers' overall valuation of work performed primarily by women. Moreover, employers did not have an economic reason to legitimately value female workers; the less employers pay in wages, the more they realize in income. Even today, a dearth of economic and political power among low-wage female workers means they continue to be relegated to lower-paying jobs and often lack the ability to command a change in employer practices.

Over the past few years, advocates tackling wage disparity have achieved changes in federal and state law through both regulation and litigation. Two recent developments likely will ameliorate low wage earnings for women with respect to two different female-dominated fields — direct care aides and exotic dancers.

DIRECT CARE WORKERS

Home health aides, personal care aides and nursing assistants all made the DOL's list of 30 Leading Occupations of Employed Women in 2013.⁶ Under the federal Fair Labor Standards Act⁷ regulations, these positions all fall under the category of direct care workers and have been excluded from the statute's minimum wage and overtime protections since the 1970s. Historically, these jobs were viewed under the broad umbrella of domestic and companionship services, along with maids, babysitters and those providing companionship services for the elderly. Today, however, home health aides, personal care aides and nursing assistants typically possess mandated certifications and provide medically related services that require skill and training. But unlike other exemptions for professional and management-type jobs that tend to have impressive earnings potential, direct care workers are earning as little as \$20,000 a year with no entitlement to overtime pay no matter how many hours they work. These workers provide home care assistance and services to the elderly, as well as people with disabilities, injuries or illnesses, at a time when the proportion of the U.S. population that is over the age of

The last few years have seen increased lawsuit activity nationwide regarding one female-dominated industry in particular: adult entertainment clubs

65 is expected to increase to more than 20 percent by 2050. Employers have capitalized on this trend by way of employing aides through home health care agencies but have not passed the value on to workers. Thus, these types of aides and assistants have remained among some of the lowest-earning workers despite the increasing need for their skills and services.

In September 2013, President Obama and the DOL announced the Home Care Final Rule⁸ clarifying that direct care workers who perform medically related services for which training is a prerequisite are entitled to federal minimum wage and overtime protections. The DOL announced an effective date of Jan. 1, 2015, but announced in October that it will delay enforcement until July 1, 2015.⁹ The DOL did not state, however, that this delay will prevent direct care workers from bringing private actions against their employers who fail to comply after Jan. 1.

Currently, only 15 states have laws providing overtime protections for direct care workers. Thus, the Home Care

Final Rule is expected to benefit about 2 million direct care workers who are virtually all employed by home care agencies. Nearly 90 percent of these workers are women and about 50 percent are women of color. In May 2013, home health aides, personal care aides, and

nursing assistants earned an average hourly wage of \$10.60, \$10.09 and \$12.51, respectively.¹⁰ Thus, overtime protection is expected to boost considerably the earnings of women workers in this field who routinely provide services in excess of 40 hours per week.

EXOTIC DANCERS

The last few years have seen increased lawsuit activity nationwide regarding one female-dominated industry in particular: adult entertainment clubs.

General estimates report that the U.S. adult entertainment club industry (i.e., gentlemen's clubs) grosses about \$15 billion annually. Exotic dancers overwhelmingly dominate this industry and club owners depend on these women workers as the central

attraction for patrons and revenue. Despite their integral role, exotic dancers face wage issues similar to those of direct care workers, but for a different reason. Club owners have utilized a caveat under federal wage and hour law to deny its dancers basic employee benefits and protections.

The definition of an "employee" under federal employment laws excludes certain workers from minimum wage, overtime and other employee protections. Coverage under the EPA, Title VII, the FLSA, and the FMLA requires workers to be bona fide employees of an employer as opposed to independent contractors. Thus, employers who classify workers as independent contractors are relieved from many obligations, including minimum wage and overtime protections. A 2009 study conducted by a group of Labor and Employment research organizations estimated that worker misclassifications contributed to a national aggregate of about \$3 billion annually in unpaid overtime to workers who are technically entitled to such pay under applicable laws.¹¹ Recently, state and federal courts in Arkansas, Colorado, Georgia, Maryland, Massachusetts, New York and Pennsylvania have ruled favorably for exotic dancers bringing misclassification suits against their club employers under the FLSA. Club owners have argued (largely unconvincingly) that its dancers were classified properly as independent contractors instead of employees because the dancers tended to be transient and, thereby, difficult to supervise. Owners also claimed dancers exercised control over their own performances. As with other female-dominated fields, the majority of exotic dancers are women, but the clubs overwhelmingly are owned and managed by men. Thus, many opponents of the club owners' contend that these owners exploit dancers' economic dependence on clubs as the avenue for obtaining clients and intentionally misclassify dancers in order to avoid the financial and legal obligations that come along with hiring employees.

The basic test for determining which workers fall into which category under the FLSA is the Economic Realities Test. Courts analyze the employer-worker relationship taking into account the following six factors:

1. **The extent to which the work performed is an integral part of the employer's business.** The more integral the work is to the employer's business, the less likely the worker is in business for herself.

Currently, only 15 states have laws providing overtime protections for direct care workers.

Recent court holdings suggest that “employee” is the correct classification for most adult club dancers.

2. Whether the worker’s managerial skills affect his or her opportunity for profit and loss.

This factor focuses on whether the worker exercises managerial skills that affect her opportunity for both profit and loss.

3. The relative investments in facilities and equipment by the worker and the employer.

The worker must make some investment and bear some risk for a loss in order for there to be an indication that she is an independent contractor.

4. The worker’s skill and initiative. To indicate possible independent contractor status, the worker’s skills should demonstrate that he or she exercises independent business judgment and initiative, as opposed to being economically dependent.

5. The permanency of the worker’s relationship with the employer. Permanency or indefiniteness in the worker’s relationship with the employer suggests that the worker is an employee, as opposed to an independent contractor.

6. The nature and degree of control by the employer. Analysis of this factor includes who sets pay amounts and work hours and who determines how the work is performed, as well as whether the worker is free to work for others and hire helpers.

When thinking of adult entertainment clubs, most would assume that dancers and performers obviously are employees, mainly because their work is an integral part of the club’s business and it is primarily the club owner who invests in equipment and facilities and bears the risk of loss. Also, club owners are likely to be primarily responsible for setting compensation and work hours. Although each club’s operations must be analyzed individually in order to determine the correct relationship, the recent court holdings suggest that “employee” is the correct classification for most adult club dancers.

A Colorado state appellate court was one of the first in the 2000s to analyze proper classification of exotic dancers. In *Redmond v. Chains, Inc.*,¹² the court held that a private booth dancer at an adult entertainment club may have qualified as an employee under the Colorado

Wage Claim Act because of the level of control the club exercised over the plaintiff’s work. The plaintiff was required to check in at the beginning of her shift, and she would have been fired if she came to work late or was absent without cause.

The next notable case came out of Massachusetts Superior Court in 2009. The court held in *Chaves v. King Arthur’s Lounge, Inc.*¹³ that an exotic dancer who worked in a bar lounge was an employee under Massachusetts law. The state law’s classification test is somewhat different from the federal six-factor test, but control and the integral nature of work are common considerations. Here, the court based its ruling on the fact that the lounge determined the work schedule and directed the dancer’s private dancing. Also, like the vast



Many may hold the misconception that dancers earn a lucrative living and would not benefit from minimum wage

majority of adult entertainment clubs, dancing was an integral part of the lounge's business.

Next came a string of federal court decisions. The U.S. District Court for the Northern District of Georgia ruled in *Clincy v. Galardi South Enters.*¹⁴ that exotic nightclub dancers were employees under the FLSA because the club controlled their work, the dancers' profit opportunities depended on the club's operation, and their work was integral to the club's business. Similar rulings, applying the FLSA's economic realities test, came from the Southern District of New York,¹⁵ the District of Maryland,¹⁶ the Eastern District of Arkansas¹⁷ and the Eastern District of Pennsylvania.¹⁸

As evidenced by these state and federal court holdings, the trend is toward increased wage and hour protections for dancers working in adult clubs. Many may hold the misconception that all adult club dancers earn a lucrative living and would not benefit from minimum wage, overtime and other employee benefits,

but the more likely reality is that dancers working in poorer regional areas are earning low wages and would benefit greatly from employee protections.

MORE IS MORE

These favorable changes in the law for direct care workers and adult entertainment club dancers stand to benefit millions of women workers, but these are two professions out of hundreds and there are many millions more who continue to earn disproportionately lower wages

as compared to men. Besides correcting misclassifications, there are other improvements that lawmakers can undertake to reach parity between men and women in the workforce. For example, an increase in the federal minimum wage would benefit female workers in particular because they constitute about two-thirds of minimum wage workers.¹⁹ The current federal minimum wage is \$7.25 per hour, which means that a fulltime minimum wage worker typically earns under \$15,000 annually. The National Women's Law Center estimates that

an increase in the federal minimum wage would benefit over 14 million female employees.²⁰ Some cities and states already have taken the lead on enhancing minimum wage; 23 states and the District of Columbia mandate minimum wage rates that are higher than the federal rate and multiple cities also offer higher minimum wage. Most notably, Seattle's City Council recently signed into law a \$15 per hour minimum wage, effective April 2015.

THE EVER-PERSISTENT PAY GAP

Although increased wages for female-dominated jobs will in turn provide increased earnings to women, a recent study reveals that the need for equal pay for equal work remains at the heart of gender wage disparities. An April 2014 study by the Institute for Women's Policy Research found that men are earning more than women even when they work in women-dominated jobs.²¹ A recent analysis of the compensation rates of 23,000 male and female corporate executives suggests one reason for this phenomenon is employer discrimination in promotion and pay practices. The analysis demonstrates that the pay gap between a women executive and her male counterparts was greater when she worked under a male executive and increased even more if that male executive was older.²² Such discrimination serves only to thwart collective efforts to improve women's relative positions in the work force. More women in management roles would likely alleviate much of this form of discrimination, but the issue is circular because such discrimination is playing a significant role in dampening the potential for women leadership. Thus, legislation, judicial advocacy and enforcement will continue to be essential mechanisms for achieving gender equality in the U.S. workforce.

Undoubtedly, private employers likewise play an important role in efforts to eliminate gender disparities. Those employers intentionally seeking to underpay women workers very likely constitute a minority. Instead, an employer may discover wage disparities within the organization have existed over time without being able to point to a specific root. Many employers have taken proactive measures to uncover and address gender disparities in the workplace, including conducting voluntary self-audits of pay and promotion practices, standardizing those practices, and increasing transparency among management and employees. ■

There are other improvements that lawmakers can undertake to reach parity between men and women in the workforce.

Endnotes

- 1 U.S. Department of Labor, Women's Bureau Statistics, *available at* http://www.dol.gov/wb/overview_14.htm.
- 2 *Id.*
- 3 These states include Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington and Wisconsin.
- 4 U.S. Department of Labor publication, *Women in the Labor Force in 2010*, *available at* <http://www.dol.gov/wb/factsheets/Qf-laborforce-10.htm>.
- 5 U.S. Department of Labor, *Equal Pay*, *available at* <http://www.dol.gov/equalpay/>.
- 6 U.S. Department of Labor, *30 Leading occupations for employed women by selected characteristics (2013 annual averages)*, *available at* <http://www.dol.gov/wb/stats/leadoccupations.htm>.
- 7 The Fair Labor Standards Act of 1938 (Pub. L. 75-718).
- 8 Application of the Fair Labor Standards Act to Domestic Service, FR Doc No. 2013-22799, *available at* <http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=27104&AgencyId=14&DocumentType=2>.
- 9 On December 22, 2014, and January 14, 2015, the U.S. District Court for the District of Columbia entered Orders vacating two critical provisions of the Home Care Final Rule: (1) the narrowed definition of "companionship services," which entitles direct care workers performing medically related services for which training is mandated to minimum and overtime wages; and (2) the regulation requiring third-party employers, such as home care agencies, to pay minimum and overtime wages to said workers. The Home Health Care Association of America filed suit against the DOL, claiming that the Final Rule's regulations invalidly changed the FLSA's statutory terms. The court agreed, ruling that Congress did not delegate to the DOL the authority to make such changes. The DOL filed an appeal of both Orders; thus the future of the Home Care Final Rule is currently pending before the U.S. Court of Appeals for the District of Columbia.
- 10 Wages retrieved from the U.S. Department of Labor's May 2013 Occupational Employment Statistics, *available at* http://www.bls.gov/oes/current/oes_stru.htm#00-0000.
- 11 *Broken Laws, Unprotected Workers – Violations of Employment and Labor Laws in America's Cities*, *available at* <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1>.
- 12 996 P.2d 759 (Colo. Ct. App. 2000).
- 13 2009 Mass. Super. LEXIS 298 (Mass. Super. Ct. July 30, 2009).
- 14 808 F. Supp. 2d 1326, 1329 (N.D. Ga. 2011).
- 15 *Hart v. Rick's Cabaret Int'l, Inc.*, 967 F. Supp. 2d 901 (S.D.N.Y. 2013).
- 16 *Butler v. PP&G, Inc.*, No. 13-430, 2013 U.S. Dist. LEXIS 159417 (D. Md. Nov. 7, 2013).
- 17 *Collins v. Barney's Barn, Inc.*, No. 4:12CV00685, 2013 U.S. Dist. LEXIS 184276 (E.D. Ark. Nov. 14, 2013).
- 18 *Verma v. 3001 Castor, Inc.*, No. 13-3034, 2014 U.S. Dist. LEXIS 88459 (E.D. Pa. June 30, 2014).
- 19 Fair Pay for Women Requires Increasing the Minimum Wage and Tipped Minimum Wage, Oct. 1, 2014, *available at* <http://www.nwlc.org/resource/fair-pay-women-requires-increasing-minimum-wage-and-tipped-minimum-wage>.
- 20 *Id.*
- 21 *The Gender Wage Gap by Occupation 2013 and by Race and Ethnicity*, Institute for Women's Policy Research, *available at* <http://www.iwpr.org/publications/pubs/the-gender-wage-gap-by-occupation-and-by-race-and-ethnicity-2013>.
- 22 Ana Swanson, *Why women make less when they work for men*, *The Washington Post*, Nov. 18, 2014, *available at* <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/11/18/why-women-make-less-when-they-work-for-men/>.



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Confirmation Bias: It has to be believed to be seen

Understanding the pitfalls of our inclination to confirm what we already believe can lead us to make better decisions and treat others more fairly.

By Dr. John G. McCabe

I was at a conference recently and overheard a discussion among a small group of older male lawyers. They were complaining that the associates in their firms, particularly the female associates, did not seem to have the same powerful work ethic as they did when they were associates.

I have researched and written several articles on gender bias in law firms, so what these lawyers were saying only confirmed what I already believed: many older male lawyers can be contemptuous of young female lawyers.

But, as I would soon realize, my expectations of their attitudes may have been the problem, as well.

It was not until later when I was speaking to two female lawyers, a young partner and a fourth-year



Dr. John McCabe is a cognitive psychologist and consultant with DOAR Litigation Consulting in Los Angeles, where he conducts research projects, assists with jury selection and witness preparation, and coordinates with graphics creation and trial presentation. He has been published in *Of Counsel*, *The Daily Journal*, and *TortSource*, as well as several academic journals. He may be reached at (310) 963-7155 or at jmccabe@doar.com.

What they were saying could also be seen as a way of reinforcing their own group identity

associate from a large firm, that I realized my mistake. I had fallen prey to one of the most prevalent biases in human cognition, the confirmation bias. The confirmation bias is the tendency of humans to seek or notice only information that corroborates, rather than contradicts, what we already believe.

I told these two women lawyers about what these old codgers had said about the young female associates in their firms. I also offered a possible explanation: technology has changed the nature of the legal profession. Although I am sure that these older male lawyers were made to work very long hours when they were associates, when they went home, the day was over. Today, clients demand 24/7 access to their legal team. And these days, with iPhones, Blackberrys, the Internet, e-filing, etc., lawyers are able to produce much more work, much faster than when these older male lawyers cut their teeth using typewriters and carbon paper. For young lawyers today, the day never really ends. Thus, when these older male lawyers see the young female associates heading home at 5:30, they may not be aware that these associates are going home, spending an hour or two with their families, but then continuing to work from home.

The partner agreed that technology had changed the legal profession, but then added, “What’s funny is that we say those things about the first-year associates all the time!” The fourth-year associate smiled broadly and nodded in agreement.

But while these older gentlemen were attacking their younger female counterparts, what they were saying could also be seen as a way of reinforcing their own group identity. As social psychology teaches us, denigrating members of the out-group (people with whom we do not identify) strengthens the bonds of the in-group (those with whom we do identify). Think of how many times you have heard your Democrat friends railing against Republicans, or vice versa. We define ourselves, in part, by what we are not. Because they were older and male, these lawyers shared part of their identity and telling condescending stories

Being mindful of confirmation bias keeps us intellectually honest, increases the likelihood of fair outcomes and can also help us to be more persuasive.

about those younger female associates strengthened their bond.

The exact same dynamic was present with the young female partner and the fourth-year associate. They question the work ethic of first-year associates to each other to bolster their membership in their group, those who have already put in years of hard work at the firm. The truth is that to some extent we all do this. It is human nature.

But just because something is a natural tendency does not mean it is necessarily beneficial. In fact, understanding the pitfalls of our natural inclination to confirm what we already believe and to see the world as “us and them” can lead us to make better decisions and treat others more fairly. More importantly, understanding these dynamics can also make us far more persuasive. So how can we tell when we are lapsing into thinking that is unfairly biased against another group? It starts with our stories.

Stories are vitally important to the way we understand our world and share it with others. Our stories have characters, heroes and villains, settings, plots that roll out over time, conflicts, and sometimes resolutions. We often have stories in common with those with whom we share some aspect of our identity. For example, if I

started a story by saying, “Yesterday I was at the DMV and ...” the listener would assume that the story was likely going to involve bureaucrats, incompetence and frustration. We are all aware of this story about the DMV, even if we have never had such an experience. It is no surprise that Matt Groening, creator of *The Simpsons*, who wanted the characters Patty and Selma to be unlikeable, made them DMV employees. Stories are a way that we understand ourselves, as well. We are characters in our own stories.

As psychologists Roger Schank and Robert Abelson (1995) put it, “Storytelling and understanding are functionally the same thing.”

It is also important to realize that we like our stories. They comfort us. They let us believe that we have a good handle on our world.

So when new information comes in that aligns with our existing stories, like my story about how many older male lawyers are biased against young female lawyers, the information is readily accepted. It fits. It confirms and reinforces the story. The same is likely true of older male lawyer’s stories about younger female lawyers’ work ethic, as well as the conference’s young women lawyers’ stories about first-year associates. We pay attention to information that confirms the story, while information that contradicts the story is ignored or rejected.

Far more interesting is when the new information conflicts with our stories, but, for some reason, be it the credibility of the source or appeal to another of our stories, we cannot ignore or reject it.

This is the flexion point of persuasion, when instead of ignoring or rejecting the new information, we change our stories to accommodate the new information or perspective.

Consider same-sex marriage. Seven years ago, in 2008, a majority of Californian voters supported Proposition 8, which in effect defined marriage as a union between a man and a woman. Six years later, a majority of Californians support same-sex marriage. This shift has been replicated in dozens of states. What changed? A lot of things: Prominent Americans came out of the closet,

as did members of many American families. It is harder, though not impossible, not to identify with members of your own family. Media portrayals of gays and lesbians also changed from strange and exotic characters, with

We like our stories. They comfort us. They let us believe that we have a good handle on our world.



The exact same dynamic was present with the young female partner and the fourth-year associate

whom most did not identify, to ordinary people, with ordinary problems. In a short period of time, the story changed. Instead of being perceived by the majority as wanting special treatment or forcing the majority to validate gays and lesbians by granting them the right to marry, gays and lesbians became like everyone else, seeking what everyone else had — the right to marry the person they loved. At this point, most Americans favor allowing same-sex couples to marry (55%, Gallup, May 8-11, 2014). For most of us, particularly younger people, gays and lesbians are no longer the “other,” a denigrated out-group. They are just like us, part of our in-group.

This is an example of a process which social psychologists call Minority Influence. One of the leading scholars in the field is Dr. William Crano, who recently wrote a book called *The Rule of Influence: Winning when you are in the minority* (2012, St. Martin's Press). For full disclosure, Dr. Crano was a professor of mine while I was a doctoral student. The first of Dr. Crano's rules for influencing the majority, that is, getting the majority to reject their stories rather than the new information or perspective, is to find a way for the minority to identify with the majority, and vice versa. The more we identify with someone, the more we allow ourselves to be influenced by them.

This change in attitudes about same-sex marriage would not have been possible if people had simply sought out information that confirmed their existing beliefs and continued to reject the information that did not fit with their stories. Not succumbing to the confirmation bias allowed for what many consider an increasingly fair outcome.

Being mindful of the confirmation bias, in addition to keeping us intellectually honest and increasing the likelihood of fair outcomes, can also help us to be more persuasive. The key is to focus on the stories in the heads of the people we hope to influence. This is done through a process called intellectual empathy, meaning seeing the world through the others' eyes, hearing through the others' ears, understanding the stories in their heads. It is not necessarily easy to do. We tend to focus on the story we want to tell, when what we really need

When you understand the stories in the others' heads, it becomes much easier to tailor facts and arguments to emphasize your common identity.

to do is to focus on the story that they will hear, given their pre-existing stories. With practice, intellectually empathizing can become second nature. Once you understand the stories in the others' heads, it becomes much easier to tailor facts and arguments to emphasize your common identity with the people you are trying to influence. As a result, your perspective is less likely to be rejected due to the others' confirmation biases. It is at this point that we can change their stories.

It may be that the older male lawyers I overheard at the conference were in fact biased against the young female lawyers at their firms. It is also possible that their condescending remarks about female associates, while reinforcing their in-group identity as older, male lawyers, actually reflect and affect their interactions with these associates and perpetuate gender bias in the legal industry. It is likely that once they believed the story about their female associates' lax work ethic, they only noticed the information that confirmed that story. There really is no way of knowing. I only overheard a small portion of their conversation. What I do know is that the conversation with the young female partner and fourth-year associate made me aware of my own confirmation bias. I had a belief and for that reason more than any other I was looking for and found information that confirmed my stories. If our goal is to make better decisions, promote fair outcomes, and be more persuasive, that is something we all must guard against. ■



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DATE: Wednesday, June 3, 2015

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Call for entries:

NAWL 2015 Selma Moidel Smith Law Student Writing Competition

Since 1899, NAWL has served as an educational forum and active voice for the concerns of women lawyers in this country and abroad. Through its programs and networks, we provide the tools for women in the profession to advance, prosper and enrich the profession. Reaching out to students, NAWL established the annual Selma Moidel Smith Law Student Writing Competition to encourage and reward original law student writing on issues concerning women and the law. The 2015 competition is under way. Rules for submission are as follows:

TOPICS: Entrants should submit a paper on an issue concerning women's rights or the status of women in the law. The most recent winning paper was "How Federal Sex Discrimination Policy Has Diminished the Role of the Criminal Justice System in Combatting Sexual Violence," written by Danielle Elizabeth DeBold, New York University School of Law (Please view paper at www.nawl.org).

QUALIFICATIONS: Essays will be accepted from students enrolled at any law school during the 2014-15 school year. The essays must be the law student author's own work and must not have been submitted for publication elsewhere. Papers written by students for coursework or independent study during the summer, fall or spring semesters are eligible for submission. Notwithstanding the foregoing, students may incorporate professorial feedback as part of a course requirement or supervised writing project.

FORMAT: Essays must be double-spaced in 12-point, Times New Roman font. All margins must be at least one inch. Entries must not exceed 15 pages of text, excluding notes, with footnotes placed as endnotes. Citation style should conform to The Bluebook – A Uniform System of Citation. Essays longer than 15 pages of text, excluding notes, or those that are not in the required format may not be read.

JUDGING: NAWL designees will judge the competition. Essays will be judged based upon content, exhaustiveness of research, originality, writing style and timeliness.

QUESTIONS: Questions regarding this competition should be addressed to Liz Stuewe at stuewel@nawl.org.

SUBMISSION AND DEADLINE: Entries must be received by May 1, 2015. Entries received after the deadline will be considered only at the discretion of NAWL. Entries must provide a cover letter providing the title of the essay, school affiliation, email address, phone number and mailing address. Entries must be submitted in the following format: email an electronic version (in Microsoft Word or PDF format) to stuewel@nawl.org.

AWARD: The author of the winning essay will receive a cash prize of \$500. NAWL will also publish the winning essay in Women Lawyers Journal in Fall 2015.

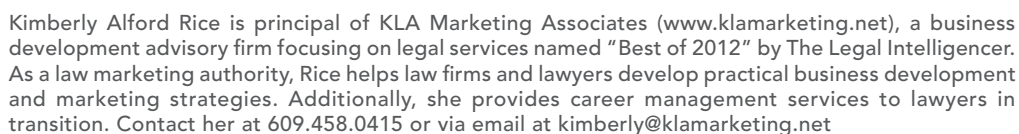
*Entries must
be received by
May 1, 2015.*



[illegible]

By Kimberly Alford Rice

Reports show that “content is king” when it comes to creating a path to your or your firm’s website – the first step toward client conversion. We know that the more often content is added, refreshed and changed on a website, it not



Use your business and professional activities, such as publishing articles, to change the information on your social media pages

only rises on Google's ranking but the firm experiences more inquiries and activity.

Here are some important things to do to keep your website consistently content fresh:

KEEP YOUR PROFILES CURRENT. Not only do you want to maintain an accurate and current website biography/profile, you must also keep your social media profiles such as LinkedIn up to date.

If you are an active networker and engaged in business and professional organizations, opportunities abound for updating your bio.

- Making a professional move (new firm; new title; ascending to leadership)
- Joining a new organization

- Assuming a committee leadership role in a trade/legal/business association
- Receiving any type of award
- Published works
- Giving a presentation
- Earning a new professional designation/certificate
- Pro bono cases
- A noteworthy case settlement and/or verdict.

BLOGGING. The more, the better. Not only does blogging provide a platform for demonstrating a lawyer's areas of expertise, it can also serve as a repository of relevant content to which you refer clients, contacts, key influencers, media and anyone who has a need to learn more about a particular area of your practice. Maintaining a blog will, over time, be an effective credentialing tool as well as highly useful SEO (i.e. Search Engine Optimization: a tool for getting traffic from search results on search engines) as it gives Google a reason to constantly index your site. It's a must do!

WINS/SETTLEMENTS. While some lawyers shy away from heralding their own successes, listing a

Maintaining a blog will, over time, be an effective credentialing tool as well as highly useful SEO as it gives Google a reason to constantly index your site.

Who uses social media?*

Total number of users:

73

PERCENT OF
ADULTS ONLINE



LINKEDIN:
238+ MILLION
USERS



TWITTER: 232
MILLION MONTHLY
ACTIVE USERS



FACEBOOK: 1.19
BILLION MONTHLY
ACTIVE USERS



GOOGLE+: 300
MILLION MONTHLY
ACTIVE USERS



* Compiled by Jaffe

noteworthy win/settlement is a means to an end – and is key to building a robust Internet presence. Clients want lawyers who are successful to represent them and it is in the Wins/Settlement section of your website that you can easily do that.

PUBLICATIONS. If you write for a publication, you should load the published work on the website and also push out the URL to your social media channels. It's an easy hit and helps to the end goal.

LINKEDIN GROUPS. Though all of us are busy, selecting one or several LinkedIn groups that gathers like-minded lawyers/professionals around an interest, and you have just found a fabulous way to gain traction in developing a strong Internet presence. It is in the LI groups that you can begin a discussion about a topic you know well and/or are seeking additional information on. In groups, not only can you begin a discussion but you can also comment on others' discussion wherein you develop a status as a "Top Contributor." ■

For more ideas of how to generate new content on your website, check out the Content Creation Blackbook.



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Tonucci appointed to Glastonbury Town Council

Cara C. Tonucci, an associate at McCarter & English, Hartford, Conn., was appointed to the Town of Glastonbury Town Council. She was appointed to fill the seat of Timothy P. Coon who is leaving to serve as a colonel in the U.S. Army Reserve. Tonucci also serves on the Downtown Hartford YMCA Board of Advisors and as a member of the Water Pollution Control Authority for the Town of Glastonbury.

At McCarter & English, Tonucci serves in the product liability group, defending corporate clients in asbestos, complex commercial and product liability litigation.



Retired AT&T counsel enters new old phase

When Merrie Cavanaugh retired from AT&T as associate general counsel she closed an old door and opened an older one. Thirty years earlier, Cavanaugh had begun her career advocating for children. She was an investigator for the Texas Department of Family and Protective Services.

Cavanaugh finds herself once again advocating for children – now as director of development for Texas Loves Children Inc. TLC is a nonprofit organization that works to improve the quality of legal services received by abused or neglected children. It provides resources, training and expertise to attorneys who represent them.

Yellen and Epps named influential educators

David Yellen and JoAnne Epps were named to The National Jurist's 2014 List of 25 Most Influential People in Legal Education. Yellen (No. 5) is Dean of Loyola University Chicago School of Law. He was recognized for his service on the ABA's Task Force on the Future of Legal Education and the ABA's Standards Review Committee. Epps (No. 21) is dean of Temple University, James E. Beasley School of Law. She was recognized as "an innovator ... pushing to reconfigure law schools to be individualized to meet the particular needs of their students."



Heggie and Gust speak to NWSB

Corinne C. Heggie and Jennifer Gust, both partners with Hinshaw & Culbertson LLP, recently gave the presentation, "Diversity in the Legal Profession and the Impact of Statutory Amendments in the Advancement of Women" to the Northwest Suburban Bar Association in Palatine, Ill. Heggie concentrates her practice in the insurance field. Gust concentrates her litigation practice representing parties in insurance disputes.



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Keep us informed

Contribute your member news via email to Laura Williams at williamslaura2000@hotmail.com.



Kristin Sostowski named to Forty under 40

Kristin D. Sostowski, a director in the Gibbons PC Employment & Labor Law Department was selected by NJBIZ, the New Jersey weekly business newspaper, as one of its “Forty Under 40” for 2014. NJBIZ’s “Forty Under 40” recognizes those who make an exceptional commitment to their professional achievement, but also to their local communities and to strengthening the business environment in the state.

Sostowski was recognized for work on behalf of employers, supporting the long-term growth and success of businesses throughout the state by helping clients ensure compliance with state and federal laws governing the workplace. She was also recognized for her leadership, both at the firm and at numerous organizations devoted to women attorneys, including NAWL.

At Gibbons, Sostowski counsels clients in all phases of the employment relationship, including compliance with federal and state workplace laws, pre-litigation risk avoidance, and defense of workplace-related disputes. She represents companies and managers in employment litigation in state and federal courts and agencies, with an emphasis on discrimination, harassment, retaliation and whistleblower matters.

Amalfe featured in Law 360 series

Christine A. Amalfe, Chair of the Employment & Labor Law Department at Gibbons P.C. and Co-Founder of the Gibbons Women’s Initiative (GWI), was featured in Law360’s “Female Powerbrokers Q&A” series.

In her Q&A, Amalfe discussed the challenges facing women in the law, outlined the Gibbons Women’s Initiative and gave advice to junior attorneys.

Law360, an online news source, covers litigation and transactions involving the world’s top 2,000 companies, as well as broad legislative and judicial developments and news about the nation’s 250 leading law firms. Its “Female Powerbroker Q&A” series, has been ongoing since November 2013.



Essandoh writes on diversity

“Keeping Watch at the Gate to Implement Diversity, Inclusion” an article by Virginia G. Essandoh, chief diversity officer at Ballard Spahr, is featured on The Legal Intelligencer Website. Essandoh is responsible for overseeing, implementing and providing strategic leadership to Ballard Spahr’s diversity initiatives and provides guidance and tactical support to the Ballard Women affinity group.

To view the article go to legalintelligencer.com (requires free signup). Registered users, go here: bit.ly/nawl100



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The Tenth Annual General Council Institute got off to a great start with the icebreaker topic "Leaders As Negotiators: How To 'Win' Without Fighting."

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The Welcome Reception at the Tenth Annual General Council Institute was a great place to meet new and catch up with old friends and colleagues.

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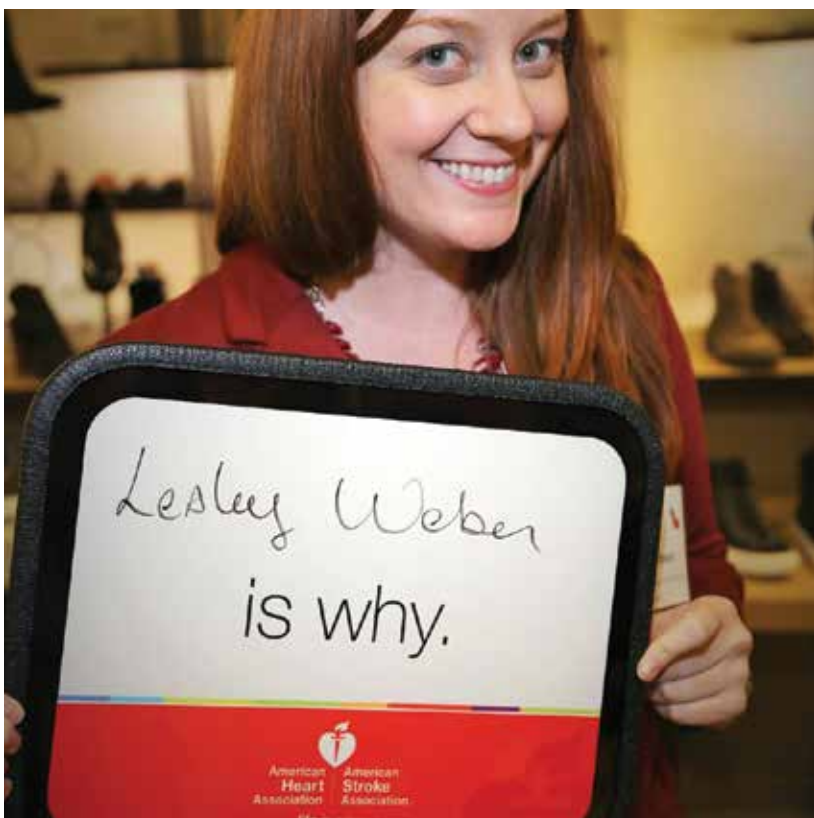
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The life of NAWL member Lesley Weber (1975-2013) was celebrated by her friends and colleagues at the Tenth Annual General Council Institute in New York last November.

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