

# Despite #MeToo, Gender Gap Has Miles to Go

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Two years after the rise of #MeToo, gender gap issues in law firms are still making headlines. The revelations present challenges both to the firms' internal stakeholders and the corporate legal departments that retain them, experts say.

In a recent survey of nearly 7,000 attorneys, across 135 countries, one in three female attorneys polled by the International Bar Association stated they had been sexually harassed at work. Half the respondents said they had been bullied. Concurrently, the details of a sex discrimination suit against an international law firm have remained newsworthy, as reported by Bloomberg Law.

The ripple effects extend as well to the larger corporate world. In a study of Fortune 1000 companies, most of nearly 400 respondents, across two dozen industries, said they had turned to outside counsel to assist in-house legal teams amid a skyrocketing number of class-action suits.

"Companies are responding to increased class-action matters, cost, and complexity with requisite aggressiveness," wrote Julianna Thomas McCabe of Carlton Fields, which published the findings. "In addition to expanding internal staffs, companies are increasingly engaging outside counsel to make an early assessment of case facts and win-loss probabilities."

Nearly a third of defended class actions focused on labor and employment matters, the study found.

"All told, companies spent \$2.46 billion defending class actions in 2018," McCabe wrote. "They expect to spend more in 2019." At the same time, internal departments were still readjusting after five consecutive years of decreased expenditures, including staffing shortages, the study found.

Corporations increasingly are reaching to outside law firms for guidance as they face a growing risk of reputational damage in an evolving legal landscape. The proliferation of class-action suits focused on gender and sex bias has progressed in fits and starts, but has gained increased attention in the wake of the #MeToo movement. Harassment-related actions, however, may be moving into different channels.

Tech giant Microsoft recently won a temporary reprieve as a federal judge refused class certification of a discrimination suit involving more than 8,000 current and former female company employees.

The defense had argued the 2011 Supreme Court case, *Walmart Stores, Inc. v. Dukes*, provided restrictive guidance for class action status. A subsequent June 2018 court decision involving a securities case also was cited as strengthening the benchmark for class certification.

Since February, however, more than a dozen pay bias lawsuits have been brought against Walmart, some of which involve claims dating back to 2001. The suits reflect a new effort by former class aspirants and a strategy shift on the part of lawyers.

The retail giant's deep pockets will certainly be up to defending against such actions, but they will nevertheless pose a management headache. One massive case may have been better to litigate than 1,000 or more cases, which can be "very expensive and difficult to manage," George Washington University School of Law professor Michael Selmi told Bloomberg Law.

Gender and sex bias issues will remain on legal department screens for the foreseeable future, despite the number of #MeToo conversations taking place across the corporate world.

Read it first on Bloomberg Law