

HOW SEXISM MANIFESTS IN PERFORMANCE EVALUATIONS: THE RESEARCH

Recognized problems with traditional performance evaluations:

- (1) Time-consuming.
- (2) Perceived as unfair.
- (3) Inaccurate.
- (4) De-motivators.
- (5) Built-in biases.

Disclaimer:

This is a broad overview of gender bias research that does not specifically address characteristics that intersect or interact with the identity of being a woman and which likely have additional or different implications on the outcome of performance evaluations.

Gender bias in performance evaluations manifests in several different ways:

- (1) Women generally receive more unconstructive performance evaluations than men.
 - a. Women are more likely to receive vague feedback not tied to outcomes.
 - a. When women receive developmental feedback, it is more likely to highlight communication styles, particularly in a negative way.
 - b. Successes of women are more often attributed to outside factors.
- (2) Gender stereotypes can lead evaluators to rate women and men differently for the same behaviors or to rate them on different sets of behaviors for the same job.
 - a. Stereotypes can cause performance ratings to be biased in the direction of the stereotype.
 - b. For lawyers, gender bias often manifests in the stereotype that the traits of a good lawyer are stereotypically male: aggressive, confident, influential. This is inconsistent with stereotypes often attributed to women: soft spoken, sensitive, less confident.
 - c. Stereotypes can lead women to be criticized more harshly for ethical violations at work than men who commit the same offenses.
 - d. The impact of stereotypes is particularly noticeable when behaviors are subjective and loosely or indirectly tied to specific job requirements.
- (3) Research does not (at least at this point) conclusively support certain conclusions.
 - a. Male and female raters don't typically differ in their evaluations.
 - b. Organizations with HR firms don't necessarily do better or worse than those without them.
 - c. Organization size doesn't seem to matter.

d. Research on these dimensions is ongoing, however.

Where does this leave us?

- 1) Median pay for women in the legal field ranges between 71 and 77% of the median pay earned by men.
- 2) Women make up a significantly smaller portion of equity partners as compared to men.
- 3) Men are promoted to non-equity partner status in significantly higher numbers than women.
- 4) Compared to men, women represent a significantly smaller portion of Fortune 500 general counsel, judges, and law school tenured faculty.
- 5) Women make up only 44% of law firm associates, which has decreased 1% in the last 10 years.

HOW SEXISM MANIFESTS IN PERFORMANCE EVALUATIONS: THE RESEARCH

Recognized problems with traditional performance evaluations:

- (1) Time-consuming.
- (2) Despite the appearance of creating an objective rating system, they are widely considered subjective measures of performance. Employees often consider them unfair.
- (3) Often based on old, irrelevant, or incomplete information. Thus, not accurate.
- (4) Research shows that both employees and managers are dissatisfied with the process. It creates an uncomfortable dynamic.
- (5) Despite the intent, they are de-motivators.
- (6) Built-in biases. This, as it pertains to gender, is most relevant to our discussion today.

Disclaimer:

We recognize that there are many workplace biases attributed to social identities that intersect with gender and that may have different or additional effects on the performance evaluations for women who identify in those intersectional groups. This presentation discusses how gender as an overarching trait affects performance evaluations of women, without distinguishing between intersecting groups.

The research shows that gender bias in performance evaluations manifests in several different ways:

- (1) Women generally receive more unconstructive performance evaluations than men. A few notable patterns.
 - a. Women are more likely to receive vague feedback.
 - i. Women are less likely than men to be given specific feedback tied to outcomes. Men, on the other hand, tend to get a clearer idea of what they are doing well and specific guidance on what needs to be done to get to the next level.
 - ii. Example: A woman is told, “You had a great year!” A man is told, “Your client origination efforts grew our client base considerably.”
 - iii. Where both genders are given vague feedback, the vague feedback is correlated with lower performance review ratings for women, but not men. This shows that vague feedback may have a tangible effect of holding women back.
 - b. When women receive developmental feedback, it is more likely to highlight communication styles, particularly in a negative way. Men are more likely to receive comments on specific job-valued skills.
 - i. In one study, where there was reference to a person being “too aggressive,” the person was a woman 76% of the time.
 - ii. Another study found that of the women’s reviews that included critical feedback, 82% of the time the feedback was based on negative personality traits – being judgmental, abrasive, and overpowering of coworkers.

- c. Also, successes of women are more often attributed to outside factors, rather than a skill shown in achieving a result. For example, winning a trial will be attributed to having a good jury, rather than, for example, nailing a closing argument.
 - d. The effect:
 - iii. Without documented job-specific accomplishments, it can be difficult for employers to justify the advancement of a woman. Conversely, the lack of skill-based feedback deprives women of the opportunity to focus on areas of improvement that will put them in a position to build the necessary skills to qualify for advancement.
 - iv. This puts women in a subtle disadvantage for improvement and advancement.
- (2) Gender stereotypes lead some evaluators to rate women and men differently for the same behaviors or to rate them on different sets of behaviors for the same job.
- a. Stereotypes can cause performance ratings to be biased in the direction of the stereotype. Stereotypes set performance expectations. Raters then evaluate behaviors consistent with the stereotype.
 - b. For lawyers specifically, gender bias often manifests in the belief that the traits of a good lawyer are stereotypically male: aggressive, confident, influential. Contrast this with stereotypes often attributed to women: soft spoken, sensitive, less confident. The “female” traits are inconsistent with what people perceive as traits of a good lawyer.
 - c. But, because another pervading stereotype is that women are collaborative in their communication and leadership styles, if a woman is aggressive as an attorney, she risks being criticized for being “hard to work with” or “too ambitious.” The same behavior by a male attorney might be lauded as zealous advocacy.
 - d. Women can also be criticized more harshly for ethical violations at work than men who commit the same offenses. The stereotype at play is that women are more ethical than men. This leads to a higher ethical standard for woman and harsher punishments for ethical violations.
 - i. Side note: For attorneys, this means that women have a 106% higher likelihood of being disbarred than men for ethical violations.
 - e. The impact of stereotypes is particularly noticeable when behaviors are subjective and loosely or indirectly tied to specific job requirements.
 - i. Particularly susceptible to bias probably are comments on “teamwork,” “communication styles,” “citizenship,” “advocacy,” and other squishy, largely subjective notions.
- (3) Research does not (at least at this point) conclusively support certain conclusions.
- a. There is some debate on this point, but research shows that male raters and female raters don’t typically differ in their evaluations.
 - b. Organizations with HR firms don’t necessarily do better or worse than those without them.
 - c. Organization size doesn’t seem to matter.
 - d. Research on these dimensions ongoing, however.

Where does this leave us?

- (1) Obviously numerous factors other than performance evaluations lead to the gender gap in pay and status in the legal field. But the implicit biases seen in performance evaluations are emblematic of the bigger problem.
- (2) Here are some notable statistics to illustrate:
 - a. As reported by the ABA in 2016:
 - i. Median pay for fulltime female lawyers was 77.4% of the pay earned by their male counterparts.
 - ii. Female judges, magistrates, and other judicial workers earn 71.8% of men's pay. And.
 - iii. Female legal support workers made 73.7% of the pay of male legal support workers.
 - b. A 2015 survey by the National Association of Woman Lawyers found:
 - i. Women make up only 18% of equity partners.
 - ii. Men are promoted to non-equity partner status in significantly higher numbers than women, as compared to the respective law school graduation rates.
 - iii. Women represent only 23% of Fortune 500 general counsel.
 - iv. Women make up 37.5% of law school tenured faculty.
 - v. Women make up 44% of law firm associates, which is down 1% since 2006.

Sources

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Responding to a Poor Performance Review

It can be devastating to receive a poor review. However, you can and should respond constructively.

Below are some tips to assist in that process.

Pre-review - Before the review, be sure that you are tracking your own progress/performance. Maintain a file of your achievements. Be sure and include any positive feedback from clients (including emails) co-workers or other managers/partners. Before the review process starts (especially if the employer does not include a self-evaluation as part of the process), take stock of your own performance – realistically. If you set goals, did you meet those goals? If not, why?

During the meeting - It is not uncommon to read the review for the first time during a meeting with your supervisor. That can be stressful. If you feel yourself getting angry or emotional, ask if the meeting can be rescheduled.

Ask for clarification and/or specific examples. This is particularly important if the area reviewed/comment is vague. For example, if the comments are “too aggressive” or “does not show potential to create and maintain business” ask for specific examples. This is especially important because research has shown that women generally receive more critical and vague reviews.

Response - Take time to carefully review and understand the written review. If you disagree with the review, draft a written response specifically addressing each point. Request to have your response included with the review. If you have documentation of any of your points, be sure and include that. If appropriate, ask for a follow-up meeting to discuss and present your response. During that meeting, come prepared to discuss the issues and ask for solutions. Follow up in writing (for example, an email confirming that the expectation for client development is _____).

Always remember - Be in control of your emotions. Do not sound defensive or angry. Do not cry. Focus on your performance. Ask for specific suggestions on ways to improve.

Additional reading:

Shelley Correll and Caroline Simard, Research: Vague Feedback is Holding Women Back, Harvard Business Review, <https://hbr.org/2016/04/research-vague-feedback-is-holding-women-back>.

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PERFORMANCE EVALUATIONS: BEST PRACTICES

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APRIL 6, 2017

THINGS TO CONSIDER

- Timing
 - Anniversary, end of year, etc.
- Setting
 - Who, where, when, etc.
- Input
 - From others (supervisors and colleagues)
 - From self (self reviews can be very helpful)
- Process
 - Well communicated
- Confidentiality

PRACTICAL TIPS

- “Good” eval tips:
 - Consistency
 - Transparency
 - Process for improvements
 - Rating and/or comments
 - Keep a log year-round
 - Difficult to only think about this once a year
 - Feedback solicited
 - Two way street

POSITIVE, VALUABLE FEEDBACK

- Supervisor giving feedback is competent/trained
- Share all positive feedback
- For performance challenges, have a specific plan that includes:
 - Describe the performance problem (example on next slide)
 - Reinforce performance standards
 - Develop a plan for improvement → solution oriented
 - Offer help
 - Emphasize potential

CITING SPECIFICS & RESPECT

- "You're obviously not winning any awards for your math skills."
 - *Negative*: focuses on the person, not on performance
- "We know you can produce accurate work."
 - *Positive*: reaffirms confidence in employee's abilities

LANGUAGE

- Be sure to evaluate performance, not attitude
- **AVOID** bias by focusing on concrete examples of instances in which the employee displayed positive or negative behavior regarding a particular trait
- Vague statements that attack an employee's demeanor could be interpreted as some kind of illegal age, race, gender or disability discrimination.

SOLUTIONS

- Ask for input from employee on how to solve performance issues
- Keep the goals realistic
- Set a timeline
- Meet again
- Stay positive

ADVICE FROM CORRELL & SIMARD (2016). VAGUE FEEDBACK IS HOLDING WOMEN BACK. HBR.

- Check the length
 - Write comparably detailed reviews for employees in the same category.
- Keep an eye out for vague or thin evaluations
 - Seek out information to flesh out evaluations.
- Identify criteria before you begin evaluations
 - Specific outcomes or behaviors

ADVICE FROM CORRELL & SIMARD (2016). VAGUE FEEDBACK IS HOLDING WOMEN BACK. HBR.

- Strive to discuss three specific business outcomes with each employee.
- Tie observations to outcomes.
 - Compare: "People seem to enjoy your company" (not tied to an outcome) with "Your cool head and affirming attitude helped the litigation department meet its deadline when stress had everyone at a boiling point" (tied to an outcome).
- Equally highlight technical accomplishments and capability for all employees in the same category.

ROLLING EVALUATIONS

- Many orgs are moving away from an annual performance review model towards a rolling or ad hoc model
- Nearly all researchers advise people to be more formal and objective, not less
- Pay attention to how vague and unconstructive feedback inserts itself into a rolling model
- Share and discuss what works