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SPEEDING OUT OF THE PANDEMIC

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SPEEDING OUT OF THE PANDEMIC

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What gets lost when Zoom takes over the courtroom

June 1, 2021 at 2:47 pm

By [John C. Coughenour](#)

Special to The Times

As the COVID-19 pandemic ground on, courts around the country looked to continue rendering justice while respecting public-health guidelines. A tactic utilized by some, including my own, was the use of livestreaming platforms such as Zoom in place of in-person proceedings. The parties, lawyers, judges and jurors participated in the solemn process of dispensing justice from the comfort and convenience of their home or office.

Those who advocate for continued use of this approach say that it does away with the formality of the courthouse and all that comes with it. This is precisely the problem. There are many lessons to be learned from the COVID-19 pandemic. Expanded use of remote proceedings is not one of them.

As we transition out of the pandemic, I urge my colleagues to return to trying cases the way we did when Abraham Lincoln tried cases — live and in person. We are at a crossroads. In an appeal to perceived efficiencies, some of my colleagues have suggested that this remote make-do procedure become permanent. But something critically important would be lost.

The venerable courthouse, with its majestic halls and stately courtrooms, engenders a respect for the rule of law upon all that enter. This is a place where life-changing decisions happen. Holding court on Zoom is like church in a supermarket parking lot. There's a reason that parishioners who tried it during the pandemic were eager to return to their sanctified spaces — the experience is different. The same is true for

courts. Remote proceedings cheapen and trivialize the sacred ceremony that is a trial. Every time I come to the courthouse, I experience its weight and observe the same in others. When presiding over recent Zoom-based hearings, I observed conduct unbecoming of the institution. This includes lawyers acting unprofessionally, and defendants and victims acting inappropriately. Then, of course, there are the maddening technical glitches, not to mention the threats of hacking and Zoom bombs that accompany the platform. While these are curable over time, they remain legitimate issues.

My greatest fear, though, is the impact of remote proceedings on the jury's critical role in our justice system. An impartial, observant and engaged jury is a necessity. For it is the ultimate finder of fact and the seeker of truth. A remote juror is inherently different from one who serves in person. There are physical cues and a rapport between parties that a juror can only fully observe and appreciate in person. But this is far from the only issue. Whether it be checking email, making purchases or simply surfing the internet, we all have been guilty of multi-tasking during an online meeting. This is an issue. A juror's engagement and focus must remain on the matter at hand.

I also fear a juror's curiosity would get the best of them, making it difficult, if not impossible, to resist the temptation to independently research the issues presented at trial. This might include evidence that a judge concludes is unnecessarily prejudicial — something a juror should not see.

A juror participating remotely lacks another critical characteristic — empathy for all involved. While direct research on the topic is in its infancy, I cannot help but draw from the notion of a military drone pilot, directed to kill through the grainy lens of a video camera. As one operator in a 2015 video documentary by The Guardian (“Drone Wars: The gamers recruited to kill”), put it, “[y]ou never knew who you were killing because you never actually see a face, you just have silhouettes and it's easy to have that detachment and lack of empathy for human life as it's easy to think of them as something else.” A juror deciding one's fate should not mete out justice through a similar lens.

I urge my colleagues to resist the temptation to give in to the notion that technology

can solve all ills. A remote trial, made possible through livestreaming platforms, is not the panacea that some make it out to be.

John C. Coughenour has served as a United States District judge in Seattle since 1981 and served as chief judge for the Western District of Washington from 1997 to 2004. He has also worked on judicial reform activities in Russia and continues to regularly lecture at the University of Washington.

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PRACTICING LAW IN *the* PANDEMIC *and* MOVING FORWARD

RESULTS AND BEST PRACTICES FROM A NATIONWIDE
SURVEY OF THE LEGAL PROFESSION



PRACTICING LAW IN *the* PANDEMIC *and* MOVING FORWARD

**RESULTS AND BEST PRACTICES FROM A NATIONWIDE
SURVEY OF THE LEGAL PROFESSION**

Stephanie A. Scharf and Roberta D. Liebenberg

with Natalie M. Gallagher and Destiny Peery



AMERICAN **BAR** ASSOCIATION

**PRACTICE
FORWARD**

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Foreword

Patricia Lee Refo, President,
American Bar Association

A year ago, when then-President Judy Perry Martinez and I created the Coordinating Group on Practice Forward, the pandemic had already caused unprecedented disruption in how we practice law and serve our clients. We went from seeing colleagues, clients and judges in offices and courtrooms to a virtual “Zoom” reality that allows us to peer into each other’s dining rooms and be entertained by each other’s pets. Courtroom proceedings also went virtual or were put on hold, causing delays in justice. Law schools and bar exams were upended. The shift was dramatic as we had to learn new technologies and skills, take on the role of educating our children at home—which had also become our workplace—and deal with the additional stress of COVID-19 affecting the health of our loved ones and fears that we might be next. During this *annus horribilis*, protests against racially motivated police violence ignited across the country and the globe in the wake of the brutal killing of George Floyd, causing a level of social unrest not seen since the 1960s and resulting in even more stress, especially for lawyers of color.

In the face of change and challenge, we do what American lawyers have done since lawyers helped found this country: we choose to get to work to help to solve the problems before us. Practice Forward is harnessing the power of the association and all its entities to help America’s lawyers, in all practice settings, navigate this new environment and thrive. Chaired by our long-time energetic and knowledgeable ABA leaders Bill Bay and Laura Farber, Practice Forward is taking on the challenge and providing thought leadership and recommendations for short- and anticipated long-term changes to the practice of law in light of the pandemic. After quickly setting up an extensive website featuring resources from across the ABA designed to help lawyers in every practice setting, the group commissioned this survey last fall to learn what resources would be most helpful to lawyers in a “new normal” and to understand the expectations for law practice as the pandemic dissipates.

What will “re-entry” look like post-pandemic? Will we ever go back to practicing in offices full-time or will we move to a hybrid model, working in the office part of the week and remotely part of the week? How will a different physical platform impact engagement and teamwork? How do we mentor and raise up young lawyers in a partly virtual or all virtual setting?

How can we best support the mental health and wellness of lawyers and team members working remotely? How does remote working impact diversity, equity and inclusion in the legal profession? What additional resources do lawyers need to thrive in a remote work setting? What resources do working parents need?

How can we help our courts develop procedures and best practices, and what new skills do lawyers need to learn to effectively represent clients in virtual proceedings? What new ethical and professional responsibility issues arise to the extent our profession stays virtual?

These are only a few of the many questions we as a profession have to answer.

Thousands of lawyers were surveyed about the challenges they are facing, and the results are telling. More than half of all respondents were working from home 100% of the time. While most reported that they are just as productive, they often feel overwhelmed.

Lawyers worry about their job security. They worry about client access and developing business. They worry about juggling billable hour requirements with work and home responsibilities. And although the transition to remote work has affected all lawyers, the survey found it has had a disproportionate impact on women lawyers with children and lawyers of color.

Concerns about mental health and wellness have long been and remain critical issues for our profession; unsurprisingly, they also emerged as a main concern in the Practice Forward survey. Due to the pandemic, women lawyers with children have been more likely to have increased childcare responsibilities and disruptions to their work. Male lawyers with young children are struggling as well. Women lawyers say they need more supportive, engaged employers; comprehensive plans for sick and family leave and subsidies for childcare, family care and tutoring.

The survey results also confirmed the continued urgency of our work toward racial equity, in our country and in the legal profession. We need to forge new paths to ensure that our laws and policies do not explicitly or implicitly harm or exclude any person on account of race, ethnicity, gender and gender identity, sexual orientation, disability, or other factors that create injustice.

Periods of major disruption are growth accelerators, offering tremendous opportunities for leaders to rethink paradigms. Now is the time to set new long-term goals and strategies. This report sets out a range of best practices for legal employers to consider moving forward. I hope you will take the time to read the full report and consider how you can play a role in building a better, stronger, more resilient legal profession and a justice system that moves us ever closer to the promise of equal justice under law.

My thanks go to President Martinez, Bill Bay, Laura Farber, Bobbi Liebenberg, Stephanie Scharf, Natalie Gallagher, Destiny Peery, the members of the Coordinating Group on Practice Forward, and all who contribute to positioning America's legal profession as a force for equality and justice.



Patricia Lee Refo
President
American Bar Association,
2020–2021

Note from the Authors

Stephanie A. Scharf and Roberta D. Liebenberg

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We are pleased to present the results of this innovative nationwide survey of American Bar Association members, the largest assessment of the experiences of lawyers in the United States during the COVID-19 pandemic, and their expectations about how law practice is likely to evolve going forward. The so-called “new normal” ways of working that were adopted in the early days of the pandemic have become a practical reality far longer than many of us first envisioned.

Starting in March 2020, lawyers throughout the country were compelled to quickly and fundamentally change how they worked with each other, provided client services, handled their workload, developed business, and managed the people and processes that take place in every organization. At the same time, lawyers were reacting to the many personal and family disruptions that accompanied the pandemic, and which affected lawyers’ productivity, effectiveness and mental well-being in working from home.

Change is an inevitable part of the legal profession. But the speed and breadth of change we experienced this past year is unprecedented in our lifetimes. As lawyers sought to adapt to the constraints and limitations imposed by the pandemic and then looked forward to post-pandemic practice, it became clear that change is not straightforward or seamless, and that we have yet to create fully functional concepts about what our work and workplaces will look like in 2021, 2022 and beyond.

This Report helps to fill those gaps by providing a full range of information about what the practice of law has looked like during the pandemic and what lawyers and employers will need to do in order to thrive once the pandemic is finally behind us. This Practice Forward survey, which reflects input from over 4,200 ABA members, is a representative sample of the hundreds of thousands of ABA members who practice law in the United States, from all geographic areas, practice settings, sizes of firms, corporations, and organizations, levels of experience, age, family status, races and ethnicities, types of gender identity, and types of disabilities.

Our goal is for leaders and other members of the profession to assess the multi-dimensional data we collected, and the resulting data-based best practices that we recommend in this Report, and use that information to engage in conversations at all levels around the policies and practices that model highly functioning, engaged, and productive lawyers and law groups, on a broad platform of diversity, equity and inclusion.

This project has greatly benefited from the work of many ABA leaders and other colleagues. ABA 2019–2020 President Judy Perry Martinez and 2020–2021 President Patricia Refo had the vision to create and support the Coordinating Group on Practice Forward. Laura Farber and Bill Bay have provided leadership for the many Practice Forward activities and were fully available with ideas and leadership for this research. Their commitment is inspiring. We were especially benefited by the input and suggestions of Paulette Brown, who provided creative ideas about the scope of the survey and questions that enhanced the overall scope and usefulness of the questionnaire. Many other ABA members gave time and comments during the design and pretest process, with enthusiasm and dedication. We especially thank the members of the Survey Advisory Committee for their strategic input: Denise Avant, Michelle Behnke, Paulette Brown, Cyndie Chang, Alfreda Coward, Barbara Dawson, Jeannie Frey, James Holmes, Scott LaBarre, Patricia Lee, Victor Marquez, Maureen Mulligan, Justice Adrienne Nelson, Richard Pena, Traci Ray, Judge Peter Reyes, Mary Smith, Daiquiri Steele, Hilary Hughes Young, and Joseph West.

We are also grateful to the ABA's Katy Englehart, Deputy Director, Office of the President, who provided outstanding encouragement and support, consistently smoothing the way and coordinating ABA staff and ABA members; and ABA staff members John Dudlo and Chris Urias, who provided a range of technical support around identifying member platforms and facilitating data collection.

Our Red Bee colleague Destiny Peery contributed both key concepts and tangible ideas for questionnaire design and analysis. We greatly value her innovative thinking and commitment to the power of well-designed research. Natalie M. Gallagher managed the logistics of turning the paper questionnaire into the electronic format needed to field and analyze a wide array of data from thousands of respondents, and then analyzed the many questions in terms of main and subgroup responses. We very much appreciate her dedication and patience with this complicated process.

We give a special thank-you to Red Bee principals Kelly McNamara Corley, Anthony Austin, Sondra Haley, Christine Edwards, and Laura Austin, for their support and commitment to the ideals and ideas that underlie this work. They are wonderful colleagues and friends and we are inspired by all that they do.

We appreciate the opportunity to design, analyze and report about this unusually comprehensive survey of the legal profession. We are planning a range of follow-up actions focused on creating a stronger, more efficient, and more broadly diverse and inclusive profession. We hope you will consider our recommended best practices, and we welcome your comments and reactions.



Stephanie A. Scharf and Roberta D. Liebenberg

with Natalie M. Gallagher and Destiny Peery



I

The Purpose of the Survey and Data-Based Best Practices



*This extended period of remote work
will have a transformative and
far-reaching impact on
the legal profession.*

The COVID-19 pandemic has had a profound impact on work at all levels, and the legal profession is no exception. The near-universal transition to remote work was unprecedented. It created daunting technological and logistical challenges for legal employers. Lawyers, staff and employers devised new ways to keep teams connected, engaged, and productive. Firms were forced to grapple with the economic consequences of the pandemic, including meeting often pressing demands by clients for legal services and implementing cost saving measures, such as salary reductions, layoffs or furloughs of attorneys and support staff, shortened intern and summer programs, and deferral of the start dates for new associates.

Individual lawyers made substantial adjustments to deal with the “new normal.” Lawyers began working from home at the same time that there was a lack of child care, in-person schooling, and ready access to the myriad of social, household and personal services that we routinely use. Juggling both professional and family obligations under these conditions was extremely difficult, and this was particularly true for women with children. The transition to remote work has also been challenging for more senior lawyers, who were unaccustomed to working from home. The considerable stress and anxiety caused by the pandemic, coupled with the sense of isolation as a result of not being in the office, has created well-being and health issues.

This extended period of remote work will have a transformative and far-reaching impact on the legal profession. No one can predict in a vacuum what the post-pandemic practice of law will look like. To address these issues, the American Bar Association, as the national voice of the legal profession, formed an innovative Coordinating Group on Practice Forward to examine the emerging challenges confronting the profession, and to provide answers, potential solutions and resources to meet them.

This Report stems from the Practice Forward ABA Member Survey (“Survey”), one of the largest surveys ever taken of ABA members. The Survey covers how the pandemic is currently affecting lawyers, and the plans and expectations for law practice as the pandemic eventually comes to an end. Because of the size of the Survey, we were able to collect data from women and men across many practice areas, practice settings, age groups, races and ethnicities. We use the data as the foundation for our recommendations about best practices for legal organizations as we move past the pandemic into an era when lawyers will be rethinking how they practice, their preferred practice settings, and, indeed, whether they will continue to practice law or quit the profession altogether.

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As we emerge from the pandemic, we have the unique opportunity to re-evaluate and reimagine all aspects of the practice of law. For too many years, law firms, companies, and other work settings that employ lawyers have defaulted to structures, policies, and practices that are a carryover from decades-old approaches to hiring, retention, advancement, compensation, and diversity. All too often, the profession struggles with the ways in which the practice of law intersects with the ability to recruit, retain and advance a diverse range of talent, promote resilient and effective teams, implement fair and equitable

compensation structures that fit business goals and strategies, and support lawyer health and well-being.

Legal workplaces should represent the full range of talent that exists in the legal profession. They ought to be diverse, equitable, inclusive, and draw upon the breadth of experiences and knowledge that the legal profession has to offer.

With all of this in mind, we structured the Survey around two compelling topics: (a) the transformation of law practice during the pandemic, and (b) the anticipated changes in law practice that our post-pandemic world will bring. Many in the profession believe that post-pandemic practice will not be the same as recently as a year ago. While it is unclear whether changes that occurred to meet pandemic needs will remain permanent aspects of law practice going forward, we believe that to plan for effective and successful post-pandemic practice, the first step is understanding how the pandemic affected lawyers at work and at home, including different subgroups



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of the legal profession, and how well various employers provided effective resources and support. Only with that understanding can decisions be made about whether change is needed in specific areas of work, how such changes may improve the practice of law, and how they can impact the diverse array of people who make up the legal profession now and into the future.

The Report includes eight sections: (1) The Purpose of the Survey and Data-Based Best Practices; (2) Design of the Survey, Methods of Analysis, and Demographics of Respondents; (3) Impact of the COVID-19 Pandemic; (4) What's Been Happening to Diversity Initiatives?; (5) Expectations and Issues for Post-Pandemic Practice; (6) Moving Forward with Best Practices for Employers; (7) Recommendations for Individual Lawyers; and (8) Conclusion.

II

Design of the Survey, Methods of Analysis, and Demographics of Respondents

*The Survey covers workplaces
that range in size from one attorney
to 250 attorneys or more.*



We designed the Survey to enable analyses that are representative of the hundreds of thousands of ABA members who practice law in the United States. To our knowledge, this is the only national survey taken of the legal profession during the pandemic that (a) allows an analysis of practicing lawyers in every practice area, practice setting, and along major demographic characteristics; and (b) generated data across a range of subject areas, including many different types of reactions to the pandemic and expectations for the future practice of law well after the pandemic has subsided.

A. Questionnaire Design

The first step was to design a questionnaire that (a) applied to the full range of ABA members; (b) would generate data about reactions to the pandemic along many different dimensions, and (c) would yield data about attorney expectations and recommendations for effective post-pandemic legal practice. The questionnaire was designed to elicit responses from ABA members who practiced in the United States in all types of practice settings.

Because the population of working lawyers is socially heterogeneous, any understanding of how the COVID-19 pandemic was affecting lawyers, and what post-pandemic practice would look like, requires the ability to understand whether personal and social factors impact responses and, if so, to what extent. We therefore designed the questionnaire to obtain demographic information about individuals (such as age, gender, race/ethnicity, disability), information about workplace factors (such as work setting, level of seniority), and information about household factors (such as members of the household, whether there were dependent children in the household, and who was responsible for their care). All of these factors were used to better understand how lawyers were faring during the pandemic and the expectations of various groups of lawyers for their post-pandemic practice.

After designing and pre-testing the questionnaire, it was uploaded into the ABA Qualtrics system for distribution to attorneys who are ABA members, had provided email contact information to the ABA, and allowed the ABA to contact them for projects like this one.

Between September 30 and October 11, 2020, over 4,200 ABA members responded to the Survey.

B. Methods of Analysis

After the Survey closed, the data were downloaded into Excel and provided to The Red Bee Group for analysis. For purposes of this Report, we include lawyers who are currently working in a job that requires a law degree, whether they are working full-time, part-time, or on temporary leave or furlough. In performing data analyses, we weighted responses by member age and gender, thereby enhancing our ability to draw conclusions representative of all ABA members.¹ The only unweighted responses that we report are in Section C, below, describing gender, sexual orientation, race/ethnicity, disability, age, practice setting, areas of specialization, and level of seniority within the sample. Each question is analyzed based on all participants who responded to the question, allowing more robust analyses of each question.² Given the large size of the sample, and the relative ease in reaching levels of significance, we typically report on significant differences only if a difference has a p value of .0001 or less. We also note that several demographic groups did not yield enough respondents to analyze that group's independent effects.

For this Report, we do not address every possible Survey result. Instead, we present the data that we believe have particular impact for understanding (a) how the COVID-19 pandemic has impacted lawyers and their practice of law; (b) how lawyers across all practice settings and levels of seniority expect the legal profession to change and operate differently as we emerge from the pandemic; (c) what types of resources and support are needed by lawyers to function effectively now and in the future; and (d) how lawyers believe the practice of law will change. For certain variables, we analyzed breakdowns by gender, race/ethnicity, or other population characteristics that might be expected to impact responses. When there was no meaningful difference among sub-groups, we report the results for the larger group as a whole.

C. Demographics of the Survey Respondents

While the ABA has some demographic information about its members, there are also gaps. We therefore decided to ask each Survey participant basic demographic questions. We note that participants in the Survey were far more likely to respond to questions about their race/ethnicity, age, sexual orientation and disability status in this Survey than members typically provide in ABA membership forms.

Gender and Sexual Orientation. 54% of the sample identified as male, 43% of the sample identified as female, and the remaining respondents identified either as other/nonbinary or did not respond.

With respect to sexual orientation, 88% identified as heterosexual, 3% identified as gay/lesbian, 1% identified as bisexual, less than 1% responded “other”, and 8% did not respond. We note that, in contrast, 89% of respondents do not report their sexual orientation to the ABA.

Race/Ethnicity. Approximately 81% of the Survey sample identified as White, approximately 15% identified as lawyers of color, and less than 4% did not identify their race or ethnicity. As a further breakdown, 2.8% of the sample identified as Asian/Asian American, 5.3% of the sample identified as Black/African American, less than .2% of the sample identified as Hawaiian/Pacific islander, 3.7% of the sample identified as Latinx/Hispanic, .5% of the sample identified as Native American, and 2.7% identified with a race or ethnicity not listed.

Disability. 91% of our respondents said they did not have a disability, while approximately 6% said they did. That disability could be a physical, cognitive or mental health disability.

Age. The vast majority of our sample (90%) reported their age (compared to 83% who report their age to ABA membership). The age distributions were similar in our sample and in the membership as a whole. ABA membership skews towards more experienced lawyers. Men in this sample were significantly older than women, and White lawyers were significantly older than lawyers of color. These numbers generally reflect the demography of the legal profession.

Practice Setting. Two-thirds of our Survey respondents (almost 67%) work in private practice. The remaining one-third work across a range of practice settings, including corporate law departments, government, the judiciary, academia, not for profits, and public interest organizations.

Men were much more likely to be in private practice settings than women (74% of men compared to 61% of women). At the same time, White male lawyers were more likely to be in private practice than lawyers of color (70% of White men compared to 56% of lawyers of color).

Employment settings differ greatly in size. While the national legal press focuses largely on private firms with over 100 lawyers, many lawyers practice in smaller private law firm settings and outside of private practice entirely. Indeed, fewer than 15% of lawyers practice in large firms. It is also the case that many lawyers leave the profession and do not work in a job that requires a law degree.

To reflect the broadest array of practices and practice settings, the Survey covers workplaces that range in size from one attorney to 250 attorneys or more. While the Survey collected data from lawyers in settings of every size, it is not surprising that close to half of the lawyers in our sample work in settings (whether private firms, corporate law departments, government, NGOs or others) where there are fewer than 20 lawyers.

Level of Seniority. The Survey respondents cover a range of positions. A substantial number of respondents in private practice (33%) were in the position of partner. Men who responded to this Survey were significantly more likely to be partners than women (39% versus 28%). White lawyers were significantly more likely to be partners than lawyers of color (White 36% compared to lawyers of color 21%). We note that the Survey percentage of lawyers of color in partner positions, which covers a wide range of private firms, is substantially higher than the partner percentages found in surveys of BigLaw firms. In fact, the Survey showed that for lawyers of color, practice in a smaller firm significantly predicts being in a leadership position compared to practice in a larger firm. For White lawyers, firm size does not predict likelihood of being in a leadership position.

For those respondents in settings other than private practice (such as corporate law departments), approximately 19% of the sample were in a leadership position either as chief legal officer or equivalent role, or deputy general counsel or equivalent role.

Areas of Specialization. Our sample covered lawyers who practiced in a wide range of specializations, across the spectrum of sections, committees, commissions, and other member groups in the ABA.



We designed the Survey to enable analyses that are representative of the hundreds of thousands of ABA members who practice law in the United States.

Employment Status and Impact of COVID-19

One threshold question is whether the pandemic had a meaningful impact on employment status. Overall 93% of ABA members are currently working as attorneys in jobs that require a law degree. Women and men and White lawyers and lawyers of color did not differ significantly on the likelihood that they are in jobs requiring a law degree. Not surprisingly, the percentage of lawyers working in jobs requiring a law degree is higher (95%) for the newest members of the bar (between 0 and 10 years) and lowest (85%) for those members who passed the bar four decades ago or more.

Among ABA members who are not working as attorneys, over half (59%) are retired; and another large percentage of them are working in non-law jobs (31%).

Given the timing of the Survey (which was fielded in late September 2020 through early October 2020), we asked those members who reported they were on temporary leave, furloughed, terminated from their jobs, or had resigned or retired—7% of ABA members—if COVID-19 had affected their employment status. The large majority (93%) did not consider COVID-19 to be a factor in their current job status. This result did not differ significantly by gender. There were, however, differences by race and ethnicity: 27% of Black lawyers, 31% of Latinx/Hispanic lawyers, 7% of White lawyers, and 0% of Asian/Asian American lawyers attributed their temporary leave, furlough, or not working as an attorney to COVID-19.

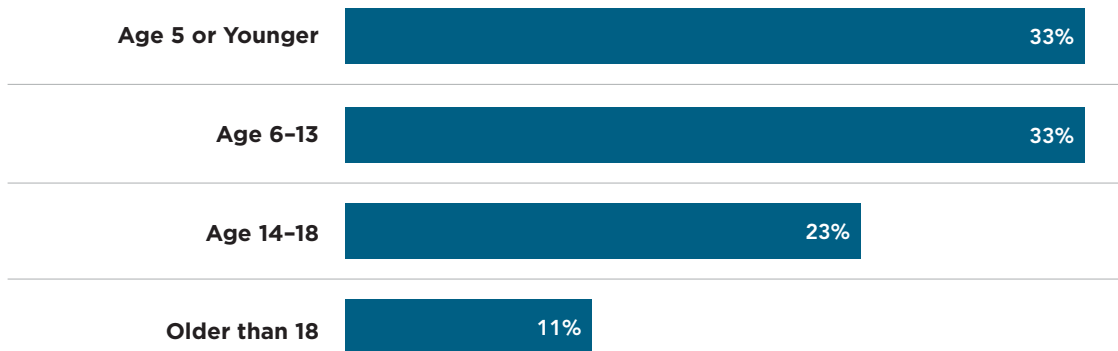
Perhaps not surprisingly, among those lawyers who reported that COVID-19 affected their employment status, junior lawyers were more likely to report this effect. Among those negatively affected lawyers who had been members of the bar 10 years or less, 50% answered “yes,” that COVID had affected their employment status. Among those lawyers graduating between 11 and 20 years ago, 44% indicated that COVID affected their employment status. There is a very large drop-off for those lawyers who graduated 21 years ago or longer, with only a small minority reporting that COVID affected their employment status.

Household Composition and Responsibilities for Child Care

Overall, the majority of ABA members (84%) live with a spouse or partner. There is a gender effect for these statistics. Men are significantly more likely to live with a spouse or partner (89% for men compared to 76% for women). It is also the case that women are significantly more likely than men to live alone. While on average, 11% of ABA members live alone, 15% of women members live alone compared to 8% of male members.

About one-third of ABA members (34%) live with one or more dependent children. We found gender differences in this variable: women are significantly more likely to live with a dependent child or dependent children than men (42% women compared to 30% men). In addition, for those members who have a dependent child at home, 33% report that their youngest child is 5 years old or younger; 33% report that their youngest child is age 6 through 13; 23% report that their youngest child at home is age 14 through 18; and about 11% report that their youngest dependent child at home is older than 18.

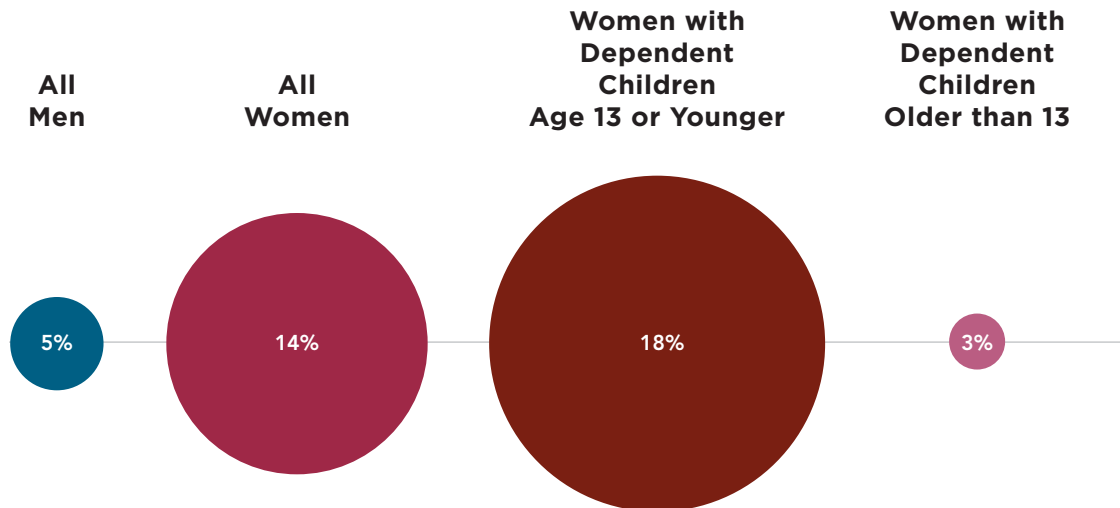
AGE OF YOUNGEST DEPENDENT CHILD IN HOUSEHOLD



The pandemic has exacerbated the already-disproportionate child care burden on women lawyers.

The pandemic has exacerbated the already-disproportionate child care burden on women lawyers. We asked those lawyers with dependent children at home about their child care responsibilities before the pandemic and at the time of the Survey. We found a significant gender effect in both time frames: women were significantly more likely than men to have personal responsibility for child care both before and during the pandemic. In addition, women were significantly more likely to have taken on *more* child care responsibility during the pandemic. That increased responsibility for child care is especially pronounced for women with pre-school children or children age 6 through 13.

PANDEMIC: TAKEN ON MORE CHILD CARE



Lawyer gender and age of child interact such that the younger the child, the more likely it is that women will have increased responsibility for child care. At the same time, the Survey results show a significant decrease in use of day care from a third party provider when comparing the pre-pandemic (25%) to the current time period (15%).

III

Impact of the COVID-19 Pandemic

Increased Stress from Trying to
“Do It All,” Worry About Employer Support,
and Reduced Client Access

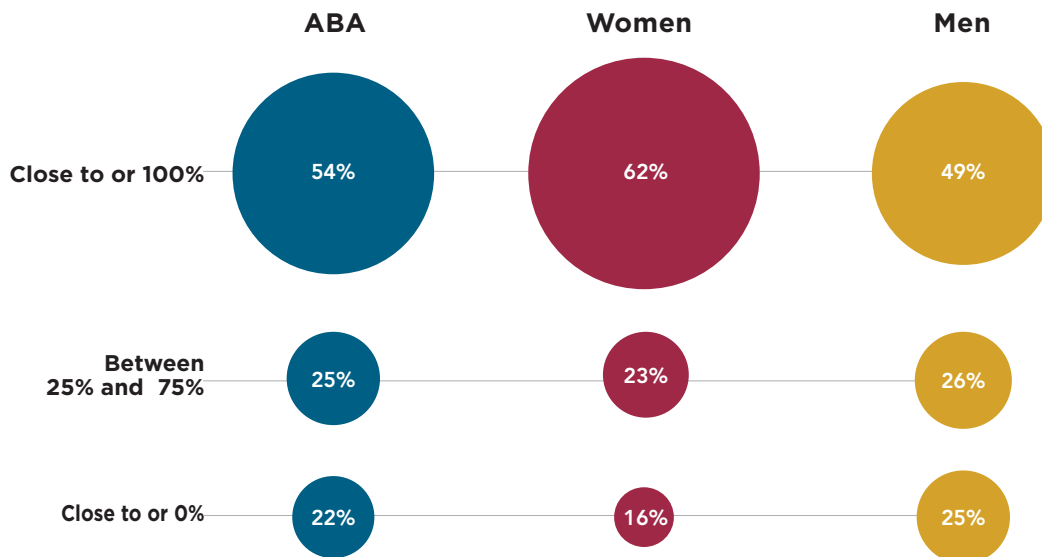
*The pandemic has influenced women,
even more than has been usual, to
consider whether to step back from
or leave the profession.*



The COVID-19 pandemic has had a significant effect on virtually all segments of the legal profession, regardless of age, gender, race/ethnicity, level of seniority or practice setting. This is not to say that all lawyers experienced the pandemic in the same ways. Far from it, as many factors can impact our professional and personal lives. That said, one of the most prominent effects of the pandemic was the merging of work life and home life. We asked a series of questions about how work and home life had changed compared to a year ago and these are the main results.

It should be no surprise that the place of work has markedly changed for large numbers of lawyers. Slightly over half of all lawyers (54%) reported that they now work from home close to 100% of the time. That said, a substantial number of lawyers continue to go to the office. About 25% of lawyers reported working from home between 25% and 75% of the time and another 22% reported working from home close to 0% of the time. Women on average were working a greater proportion of their hours from home than men.

TIME WORKING FROM HOME



The majority of lawyers (60%) are more likely to be working on a flexible schedule, especially those lawyers with dependent children at home (65%).

Lawyers have made other adjustments—sometimes successful, sometimes less so. Over 90% of lawyers are spending *more* time on video or conference calls, but about 55% are spending *less* time on developing business or reaching out to clients. The presence of younger children in the household predicts even less outreach to clients. About 70% of lawyers reported spending more time with the people they lived with than a year ago. This result was especially true for lawyers with dependent children at home (approximately 79%). Somewhat to our surprise, lawyers generally reported no meaningful change in their efficiency doing work, although lawyers with young children at home experienced a greater decrease in their efficiency.



It should be no surprise that the place of work has markedly changed for large numbers of lawyers.

In light of these and other changes in work life and home life, we aimed to find out how lawyers were holding up. Here are the results.

A. Lawyers, Especially Those with Young Children at Home, Are Overwhelmed with All They Must Do

We asked a number of questions to determine how it felt to be working from home in a time of stress and disruption. While we expected some increase in negative feelings, we were surprised at the broad extent to which lawyers reported much greater levels of stress and disengagement from work than a year ago.

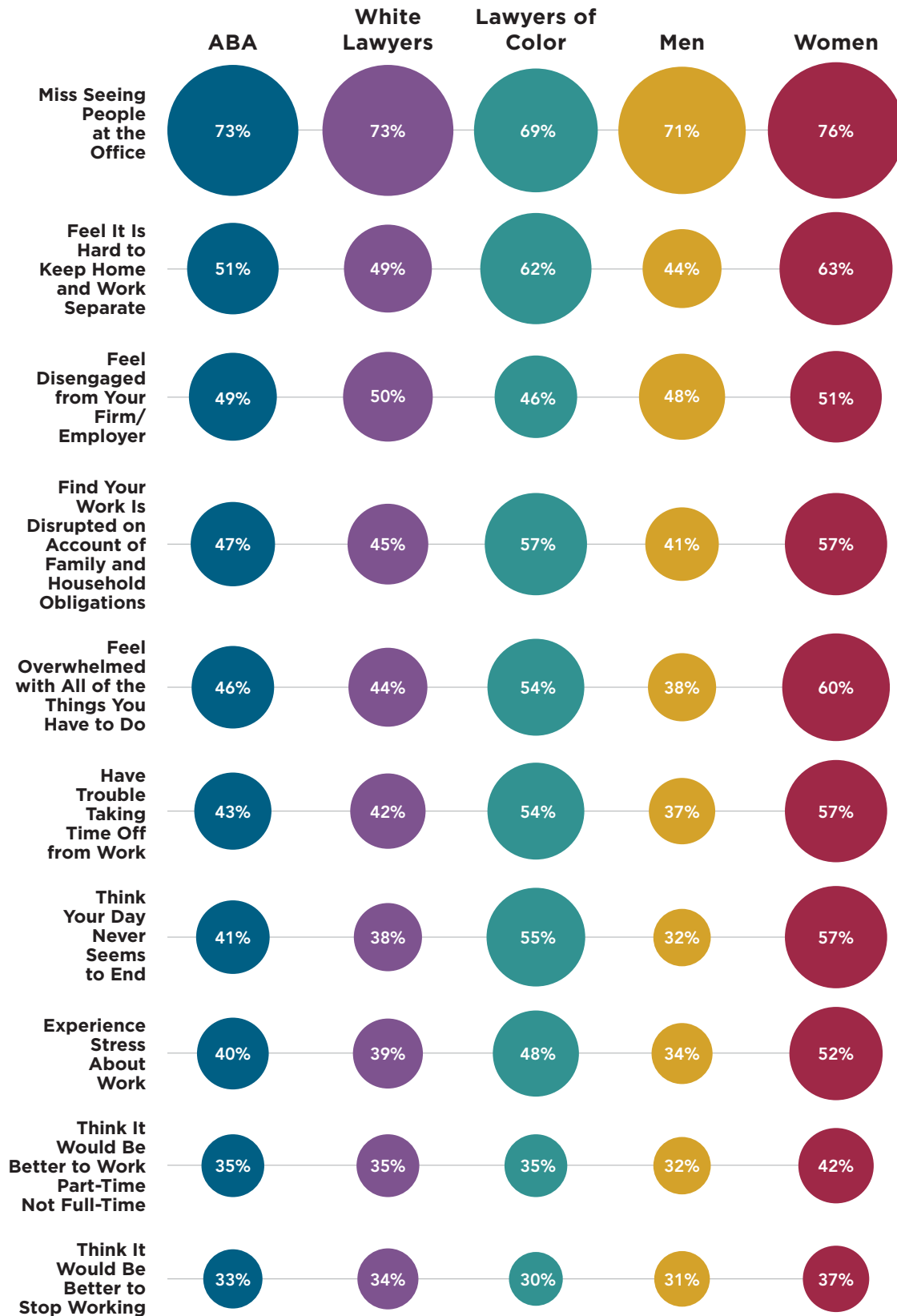
More specifically, we asked how often, compared to a year ago, lawyers experience these feelings:

- ▶ Work is disrupted more often now than a year ago on account of family and household obligations.
- ▶ Miss seeing people at the office.
- ▶ Feel disengaged from their firm or employer.
- ▶ It is hard to keep home and work separate.
- ▶ Feel overwhelmed with all the things they have to do.
- ▶ Experience stress about work.
- ▶ Have the feeling their day will never end.
- ▶ Have trouble taking time off from work.
- ▶ Think it would be better to stop working entirely, or to work part-time and not full-time.

The results were eye-opening. On every single one of these questions, lawyers generally were experiencing and feeling these sentiments significantly more often than a year ago.

As shown by the data, ABA members generally show much higher levels of stress in trying to manage work and home; higher levels of disengagement with the social aspects of work; and more frequent thoughts about whether full-time work is worth it.

COMPARED TO A YEAR AGO, ABA MEMBERS MORE OR MUCH MORE OFTEN:



For many of these questions, race and ethnicity showed an even greater impact. Compared to a year ago, lawyers of color have even higher levels of stress about work; are more likely to think the day never ends; have greater difficulty taking time off from work; feel overwhelmed with all the things they have to do; feel it is hard to keep work and home separate; and find work disrupted by family and household obligations. In contrast, White lawyers were significantly more likely than lawyers of color to miss seeing people at the office, feel disengaged from their firm or employer, think it would be better to work part-time, or to stop working entirely. These differences may reflect the greater engagement that White lawyers typically feel in the workplace,³ the comparatively greater economic flexibility enjoyed by many White lawyers,⁴ and the older age of White lawyers.

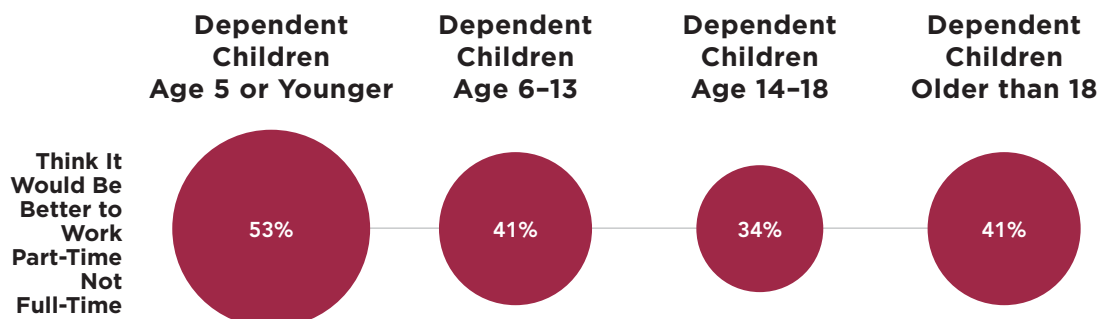
We also found significant gender differences in levels of stress and disengagement around work. Women experienced greater disruption in work than men. Thus, women were more likely to report increased frequency of work disrupted by family and household obligations, feel it is hard to keep work and home separate; feel overwhelmed with all the things they have to do (an effect especially true for women with younger children), experience stress about work, think their day never seems to end, and have trouble taking time off from work. Lawyers with children at home also report increased feelings about these same factors; and women with children, and especially younger children, report even greater levels of feeling work is disrupted on account of family and household obligations.

These pressures are compounded by the fact that, regardless of other increased obligations, workloads have not been substantially reduced during the pandemic. More than half of lawyers (57%) worked 41 or more hours per week. Another 25% worked between 31 and 40 hours a week, 7% worked 21 to 30 hours, 5% worked 11 to 20 hours and the remaining 6% worked 10 or fewer hours per week.

All that said, close to 80% of the sample continued to work full-time or close to full-time. The presence of children in the household did not significantly reduce worktime. About 91% of lawyers with children at the preschool age are working at least 31 hours a week, and 60% of lawyers with preschool age children are working 41 or more hours per week.

Given these increased stresses and strains, it is not surprising that many lawyers (35%) are thinking significantly more often this year than last year about working part-time. Women with children age 5 or younger (53%) and women with children age 6–13 (41%), were even more likely to be thinking about part-time work. The pandemic has influenced women, even more than has been usual, to consider whether to step back from or leave the profession.⁵

THINKING ABOUT WORKING PART-TIME: WOMEN WITH DEPENDENT CHILDREN



B. Stress Around Workplace Resources, Recognition, and Job Security

At the same time that lawyers have increased stress about care for children and other household obligations, there has also been a marked increase in stress concerning support from employers. Regarding workplace resources and recognition, we asked lawyers whether, compared to a year ago, these experiences were more frequent:

- ▶ get overlooked for assignments or client opportunities
- ▶ not receive enough recognition for work you do
- ▶ get help with business development
- ▶ receive training and coaching
- ▶ worry about advancement
- ▶ worry about salary reduction
- ▶ worry about getting furloughed or laid off

The results are telling. *First*, every one of these seven concerns was experienced significantly more often now compared to a year ago, regardless of gender, race/ethnicity, or practice setting. At the top of the list were (a) more worry about a salary reduction (55%), (b) worry about getting furloughed or laid off (40%), and (c) worry about advancement (28%).

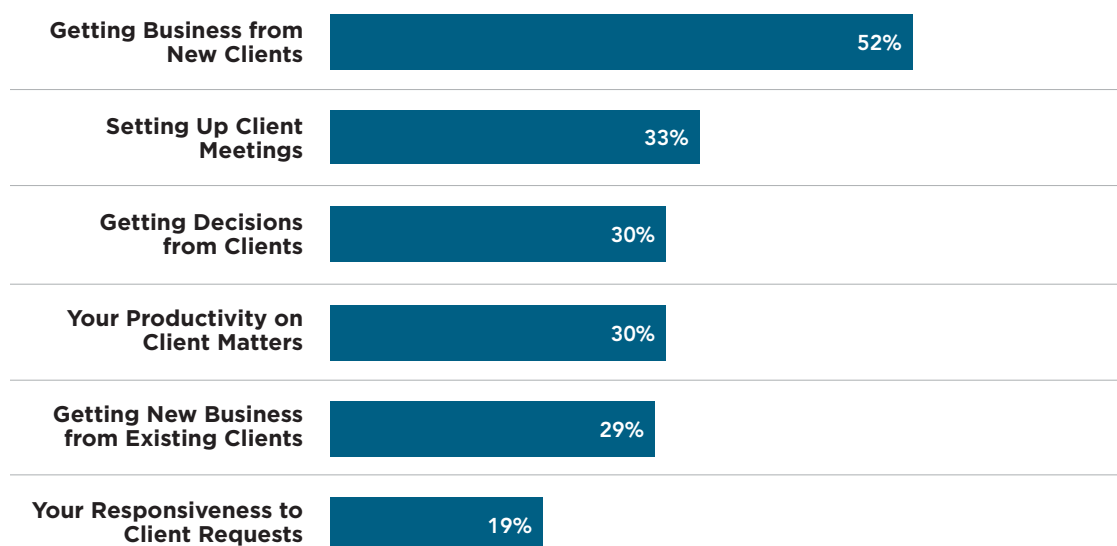
Second, some groups of lawyers had even higher levels of concern. Specifically:

- ▶ Women generally worried more often about advancement, receiving a salary reduction, and getting furloughed or laid off.
- ▶ Women with children felt more often than others that they were overlooked for assignments or client opportunities.
- ▶ Lawyers of color, regardless of gender, worried more often about advancement.

C. Obtaining New Business and Providing Client Service Has Become Substantially Harder Than a Year Ago

We asked how much harder it was to obtain new business from existing clients or new clients, to get decisions from clients, be responsive to client requests, be productive on client matters, and set up client meetings. The greatest increase in difficulty was getting business from new clients—which 52% of lawyers reported as harder or much harder than last year. The results for all of these aspects of client service are as follows.

NEW BUSINESS AND CLIENT SERVICE BECAME HARDER OR MUCH HARDER



Unlike many other questions we asked, responses about the difficulty of providing client services reflected a wide range of lawyers, with no meaningful differences by gender or race/ethnicity. The exception was the question about setting up client meetings, where women and lawyers of color reported the same level of difficulty as they experienced a year ago—suggesting that setting up client meetings has typically been more difficult for women and lawyers of color, and that level of difficulty continues.



The COVID-19 pandemic has had a significant effect on virtually all segments of the legal profession, regardless of age, gender, race/ethnicity, level of seniority or practice setting.

One of the most prominent effects of the pandemic has been the merging of work life and home life.



IV

What's Been Happening to Diversity Initiatives?

The past year has brought an increased focus on meaningful equity and inclusion for people of color in the United States, with no exception for the legal profession.



A. Race and Ethnicity Initiatives

Whether there are meaningful opportunities for lawyers of color in all areas of the legal profession is not a trivial question. While lawyers of color have represented over 20% of law school graduates for a number of years, the statistics about entry hires, advancement and movement into leadership roles are more discouraging. The past year has brought an increased focus on meaningful equity and inclusion for people of color in the United States, with no exception for the legal profession.

The Survey asked a number of questions about diversity initiatives in corporate law departments and law firms, specifically (a) what diversity, equity and inclusion (“DEI”) strategies and tools are being used, (b) has this past year’s increased public awareness of racial and social injustice affected the use of certain strategies, and (c) is it more likely that lawyers are discussing issues of racial justice today than a year ago? Here is a summary of the results.

1. Employer Strategies Around Race and Ethnicity

We asked lawyers in private practice and corporate law departments about whether certain DEI strategies exist in their workplace and, if so, the extent to which those strategies continued to be used during the pandemic.⁶ Our focus was on the following strategies, which are often the basis for DEI programs in law firms and corporations:

- ▶ a mentorship or sponsorship program,
- ▶ assigning lawyers of color to significant matters,
- ▶ including lawyers of color in opportunities for business development,
- ▶ introducing lawyers of color to current clients,
- ▶ unconscious bias or implicit bias training,
- ▶ increasing the number of lawyers of color who are partners, and
- ▶ increasing the number of lawyers of color in leadership roles.

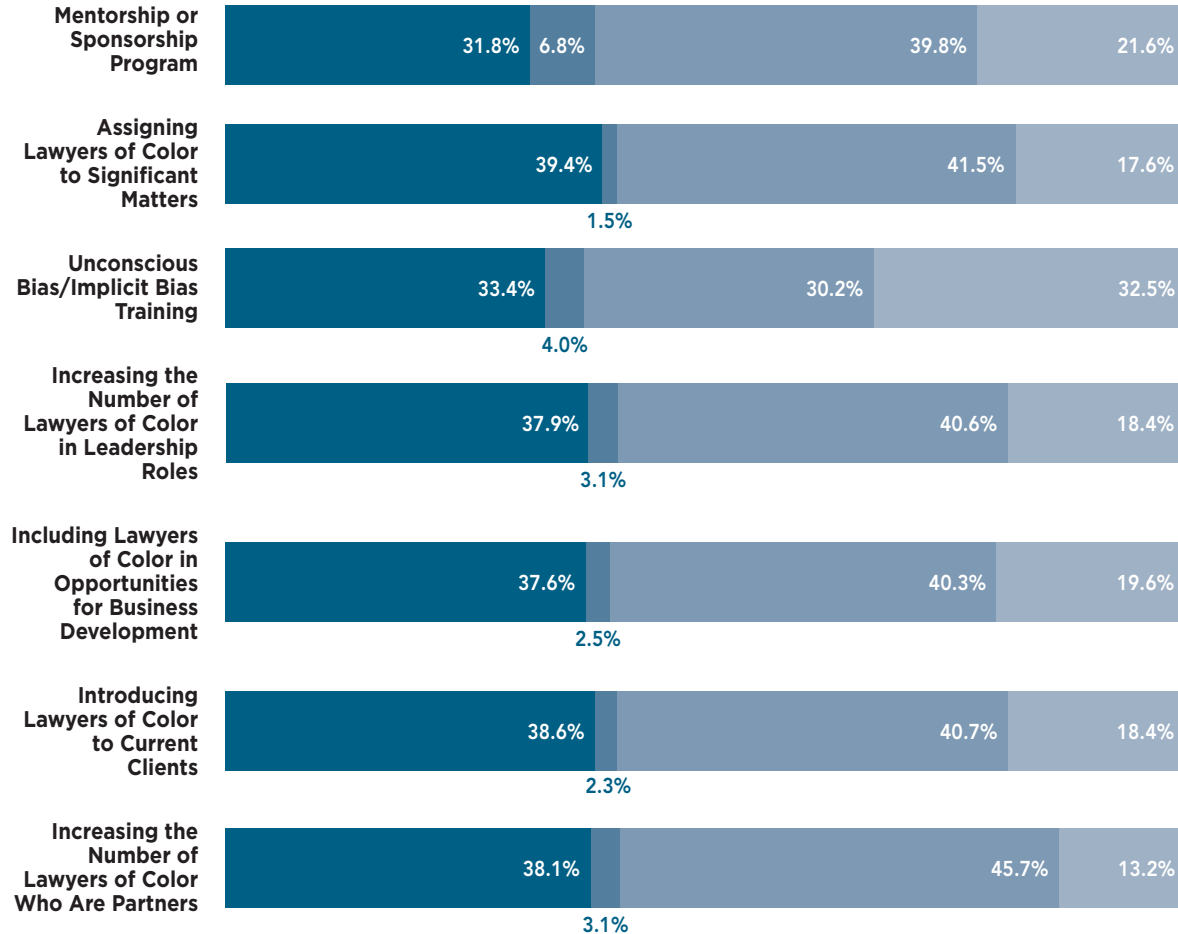
First, we found that these policies exist in many different private law firms and corporate law departments. It would be unusual for a mid-sized to large firm, or corporate law department, not to have at least some of these strategies for retaining and advancing lawyers of color. If we exclude solo practitioners (as for the DEI strategy questions), 43% of lawyers in private practice were in firms with 50+ lawyers, with the other 57% in smaller firms. Looking specifically at private firm settings, at least 61% of lawyers in private practice are in firms where each strategy is in place.

At the same time, many lawyers in corporate settings also reported the existence of comparable DEI policies: mentorship or sponsorship programs (53%); assigning lawyers of color to significant matters (47%); unconscious bias/implicit bias training (71%); and increasing the number of lawyers of color in leadership roles (46%). (Questions about opportunities for business development, introducing lawyers to current clients, and increasing the number of lawyers of color who are partners does not clearly apply to corporate settings.)

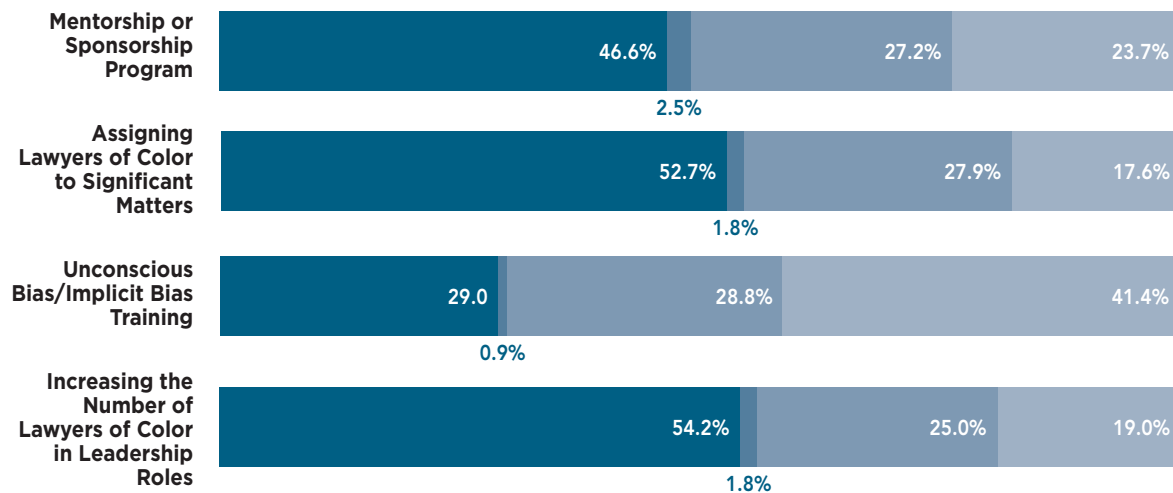
EXISTENCE OF STRATEGIES AROUND RACE AND ETHNICITY

No Such Strategy
 Largely Put on Hold
 Stayed the Same
 Increased

Private Practice

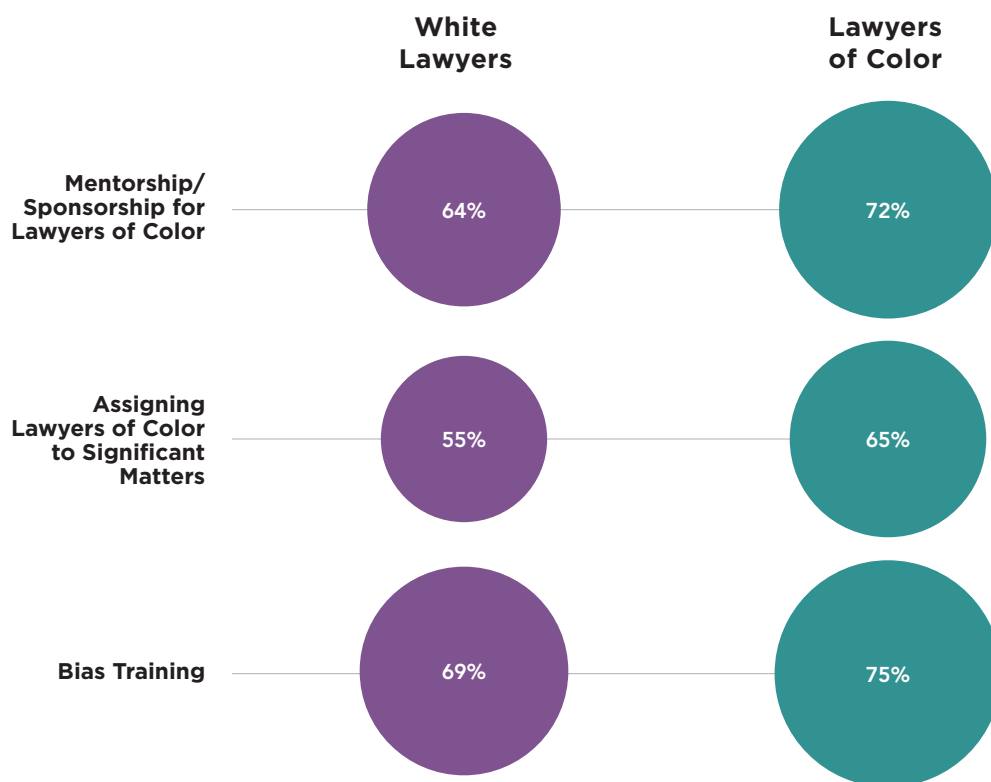


Corporate



Second, as shown by our data, DEI strategies for lawyers of color continue to be active. The vast majority of lawyers in both private practice and corporate settings report either the same level of activity or *increased* strategies compared to a year ago. Indeed, relatively few employers had put their DEI strategies on hold. In both firms and corporate law departments, the greatest increase was around unconscious bias/implicit bias training.

LIKELIHOOD OF REPORTING THAT DEI POLICY EXISTS



These general results vary, however, depending on race/ethnicity, as shown above. For three strategies—mentorship or sponsorship program, assigning lawyers to significant matters, and unconscious bias/implicit bias training—lawyers of color compared to White lawyers are more likely to report that the policy exists in their workplace. This result may be because lawyers of color are more focused on these programs and more likely to be aware of whether these strategies are used in their workplace.

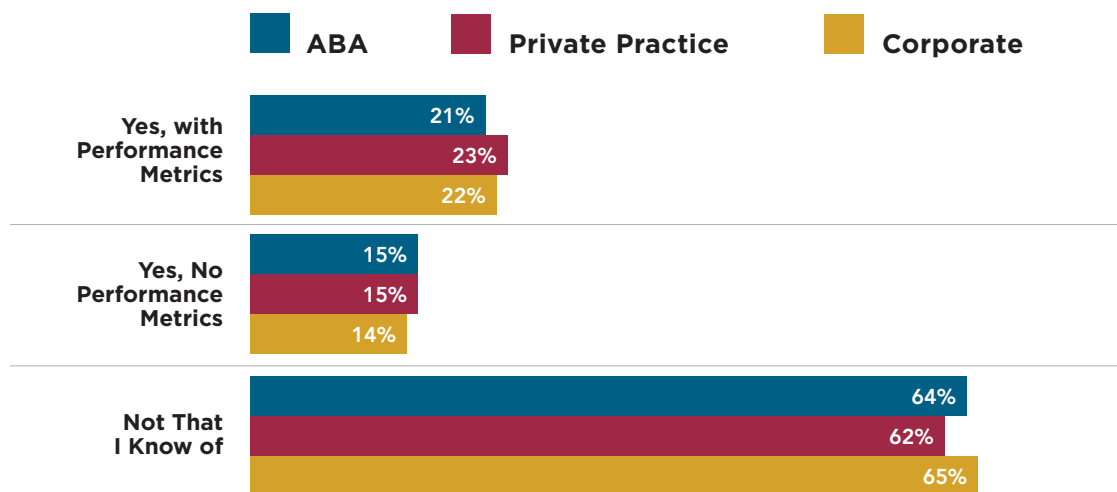
For those lawyers who perceived a change in these strategies over the past year, White lawyers were significantly more likely to report that these strategies had increased during the past year. That result was true for all seven strategies, suggesting that over the past year, White lawyers have become more aware of how race and ethnicity impact careers in the law, and the value of addressing the reasons why, including implicit biases. It may also be that lawyers of color look with a more jaundiced eye at what it means for a strategy to increase and whether any superficial increase in activity has a meaningful impact.

2. Use of Accountability Tools

Closely aligned with DEI strategies are “accountability tools” used for assessing results of DEI initiatives. Change takes time and sustained effort. It is difficult to understand and explain the results of strategies without measuring performance over time. There is no one right measurement “tool” but the absence of any tool should raise a red flag. The Survey asked participants (a) whether their firm or employer used an accountability tool to assess the results of diversity and inclusion strategies in their firm or workplace, and (b) if an accountability tool existed, did it include performance metrics?

The majority of ABA members (64%) are not aware of an accountability tool for diversity and inclusion strategies in their work settings. Lawyers in leadership positions are slightly more likely than others to report that such a tool existed. Of the approximately 36% of ABA members who work in places where an accountability tool is used, more than half of them report the use of tools with performance metrics. These results varied little between lawyers in private practice versus lawyers in corporate law departments.

ACCOUNTABILITY TOOLS AROUND DEI STRATEGIES



One type of accountability tool that is often used in corporations is an impact analysis of proposed pay cuts or layoffs, at a minimum comparing White lawyers and lawyers of color. When we asked about that tool, slightly less than half (47%) of private practice lawyers said such an analysis is done, while 57% of lawyers in corporate law departments said such an analysis is done. We note with some irony that impact analyses are almost routinely advised by employment lawyers counseling their corporate clients who face a reduction in force or furloughs, to avoid the risk of litigation and to make sure that there are no implicit biases shaping decisions. In the legal profession, the risk of litigation has been historically lower; selective reductions may also cover departments or certain levels of seniority that make decisions more straightforward; and layoffs appear to be rarer than in other employment settings.

3. Conversations About Race and Ethnicity

2020 brought front and center an array of issues around race, including simply talking to each other about racial justice. We asked ABA members how often, compared to a year ago, they had conversations with colleagues about racial justice issues; and whether, compared to a year ago, it has been easier or harder to have such conversations.

The large majority of lawyers (82%) answered this question, and reported that this year (compared to a year ago), they had conversations with colleagues about racial justice more or much more often (60%), with about 37% reporting that such conversations were easier or much easier. About half of lawyers (51%) reported that the ease of such conversations was about the same as a year ago. Interestingly, there were no strong differences between White lawyers and lawyers of color, or between those in leadership positions or other members.

B. Gender Initiatives

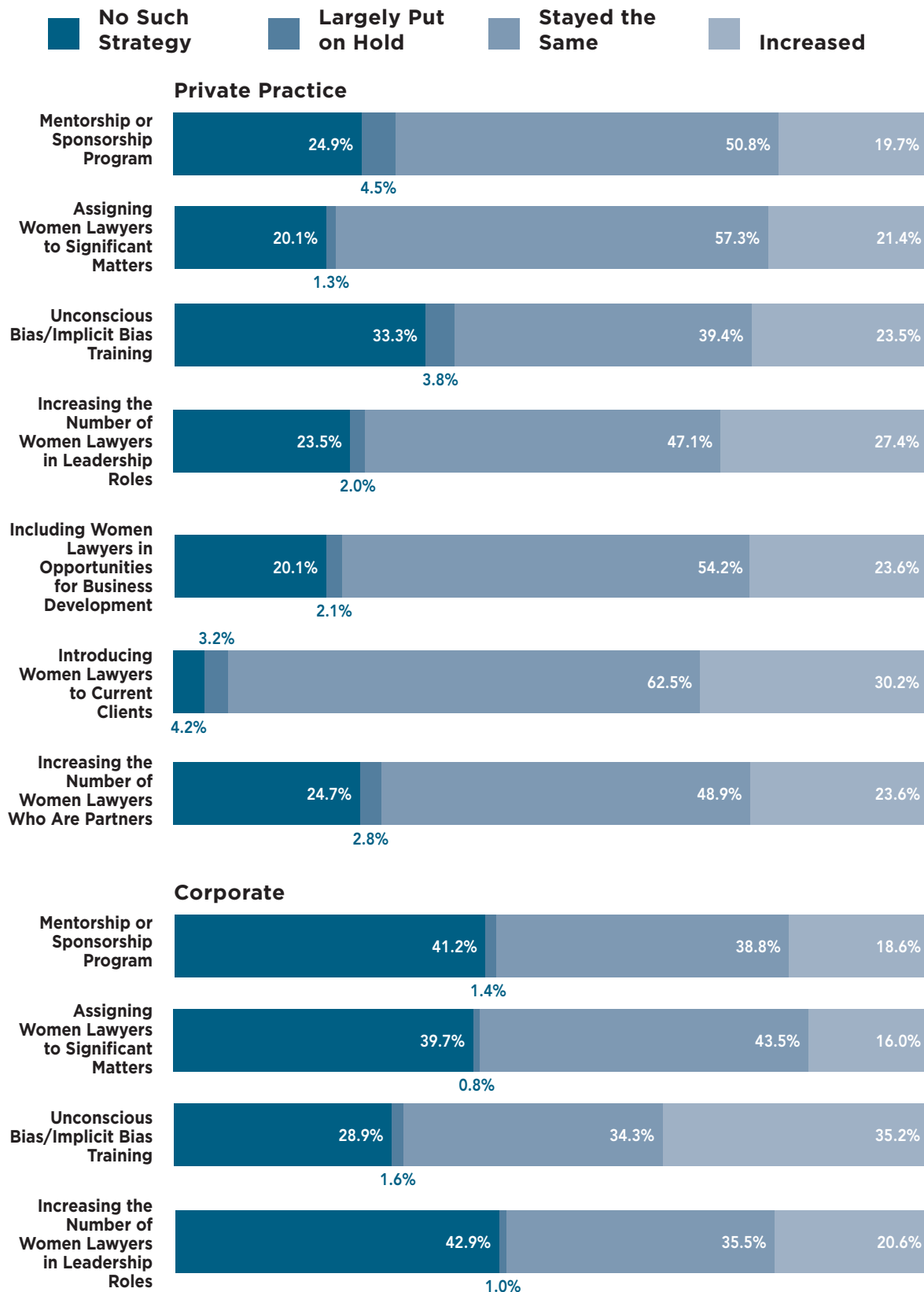
Just as there have been more DEI efforts focused on lawyers of color, women lawyers have also been actively pushing for greater advancement in all practice settings, especially in law firms and corporate law departments. While there has been some progress over the several decades that increasing numbers of women have worked in the legal profession, there continues to be a wide gender gap between the number of women law school graduates and the number of women who are equity partners of firms and leaders in law departments. The data beg the question: what are law firms and corporate law departments doing today to improve gender diversity?

1. Employer Strategies Around Gender

In both private practice and corporations, the majority of lawyers reported that the seven DEI strategies listed above for advancing race and ethnicity initiatives also exist in their workplace for advancing gender initiatives.

In firms, it is unusual for any program to have been put on hold and, for many, the past year has seen increases in strategies concerning gender diversity. For law firms, there were significant increases for strategies focused on unconscious bias/implicit bias training and increasing the number of women lawyers in leadership roles. In corporations the situation is similar. Programs either stayed the same or increased, with unconscious/implicit bias training showing the greatest increase.

EXISTENCE OF STRATEGIES AROUND GENDER



2. Use of Accountability Tools

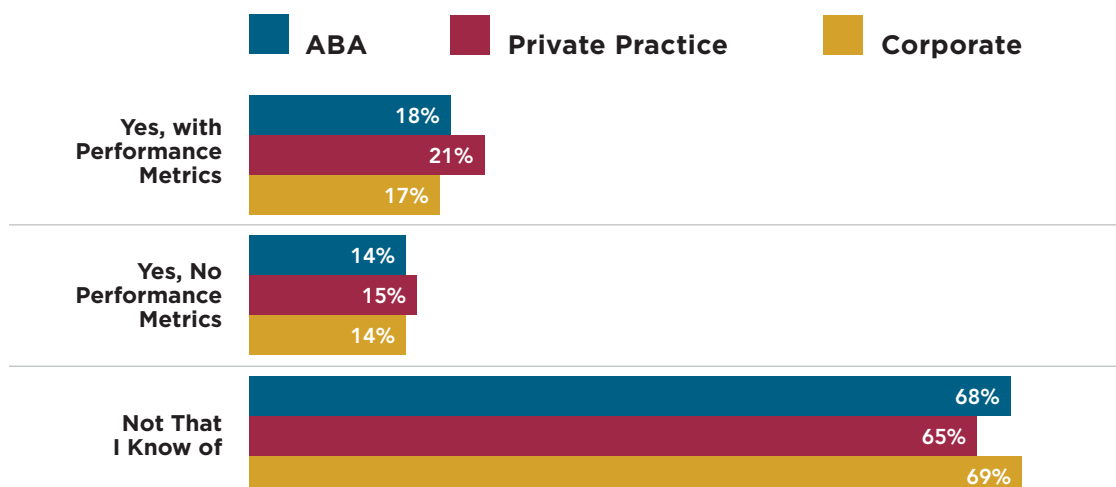
In response to questions about the use of a gender accountability tool, roughly two-thirds of members (68%) stated that they did not know of the use of such tools when assessing the results of diversity and inclusion strategies for women lawyers. That result was substantially the same for lawyers in private practice and corporate law departments.

Regarding the use of performance metrics for gender strategies, for those lawyers in private practice who report that their firms use an accountability tool, 58% report the use of performance metrics as part of their firm's assessment. The number is similar in corporate settings: 55% of lawyers whose corporate employers use an accountability tool report the use of performance metrics as part of the assessment.

One type of accountability tool used is an impact analysis of proposed pay cuts or layoffs, comparing men and women. When we asked about that tool, 45% of private practice lawyers said such an analysis is done in their firms, while 65% of lawyers in corporate law departments said such an analysis is done in their workplace.

Overall, accountability tools do not appear to be highly used techniques in the legal profession, even though such tools are considered sound methods for tracking how various policies and practices impact the advancement of diverse groups and how well an employer is meeting stated goals. The lack of accountability tools is in stark contrast to the much larger number of lawyers who report various diversity strategies in use at their firm or corporation. It is hard to say how any given organization will know whether goals are being met without the use of accountability tools, and organizations will have trouble discussing how successful they have been with diversity initiatives if results are not being measured and discussed on a broad basis within an organization.

ACCOUNTABILITY TOOLS AROUND GENDER STRATEGIES



C. Stress at Work Traced Directly to Race, Ethnicity, and/or Gender

Anecdotally, women and lawyers of color often feel additional stress at work simply because of their gender, race or ethnicity. The stress comes from a number of sources, including the feeling of standing out in a negative way from others at work; of having to represent your race or ethnicity or gender as the perfect role model; of not being accepted for who you really are; of having to hide your authentic self; of not being heard to the same extent as others; and much more. Higher levels of stress, feelings of social isolation, and always feeling “different” are reasons why women and minorities leave law firms more often and sooner than majority lawyers and men.

While there have been many anecdotal reports and commentary about the extra burden of race, ethnicity, or gender, to our knowledge there has not been a large scale survey of the legal profession on the issue. To better understand the scope of the stress experienced by minority and women lawyers, we asked ABA members two questions (1) do they feel stress at work because of their race, ethnicity or gender; and (2) how often do they feel that their voice is heard in work meetings, including virtual meetings? To those steeped in efforts to enhance DEI, the disappointing results below will unfortunately not be surprising. Employers still have a long way to go to build inclusive work environments for lawyers of color and women.



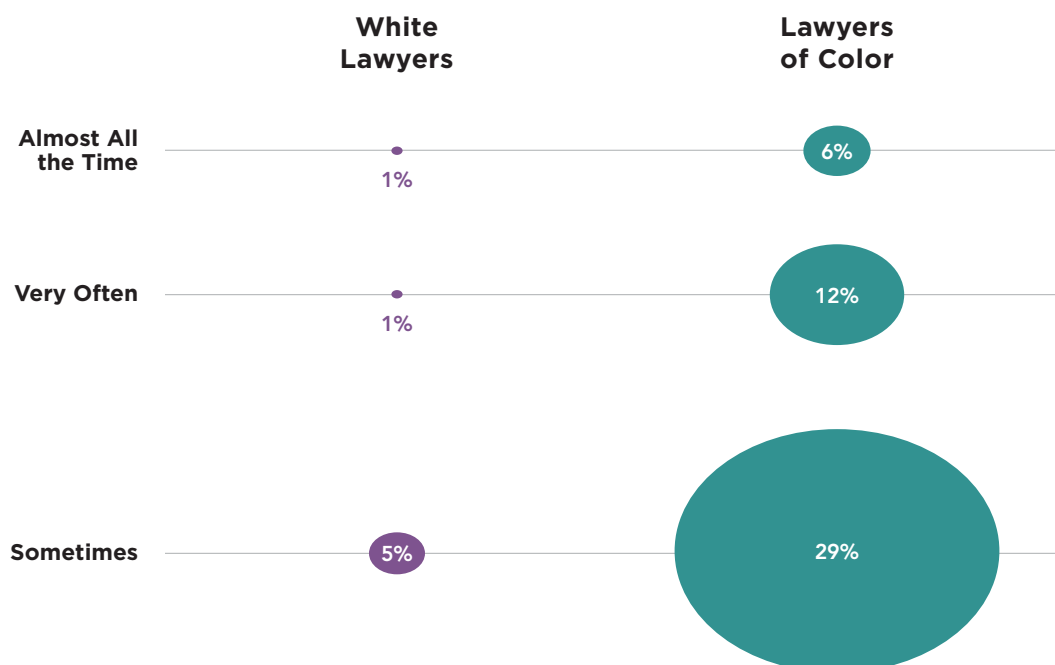
Women and lawyers of color often feel additional stress at work simply because of their gender, race or ethnicity.

1. Stress at Work Because of Race and Ethnicity

With regard to race and ethnicity, the key findings are that:

- ▶ Lawyers of color are significantly more likely to feel stress at work because of their race or ethnicity compared to White lawyers. While 7% of White lawyers feel stress at work at least sometimes on account of their race, in contrast, 47% of lawyers of color feel stress at work at least sometimes on account of their race/ethnicity.
- ▶ Race interacted with gender, such that women of color were significantly more likely to experience stress at work on account of race at least sometimes (54%) compared to White women (6%) or men of color (41%).
- ▶ Within various racial and ethnic groups, Black lawyers are more likely to experience stress at work very often or almost all the time on account of race or ethnicity (34%) compared to Asian lawyers (12%) or Hispanic lawyers (5%).

FREQUENCY OF STRESS AT WORK BECAUSE OF RACE AND ETHNICITY



Some of these effects may be a consequence of heightened awareness from the Black Lives Matter movement, which became prominent in the middle of 2020. From a larger perspective, the feeling of stress on account of race and ethnicity—feeling “left out and left behind,” socially isolated, and other reactions to the work environment—is not a new phenomenon. The stark differences we found show that there is much work to be done before the large majority of lawyers of color feel comfortable on an everyday basis in their workplace without feeling stress simply on account of their race or ethnicity.

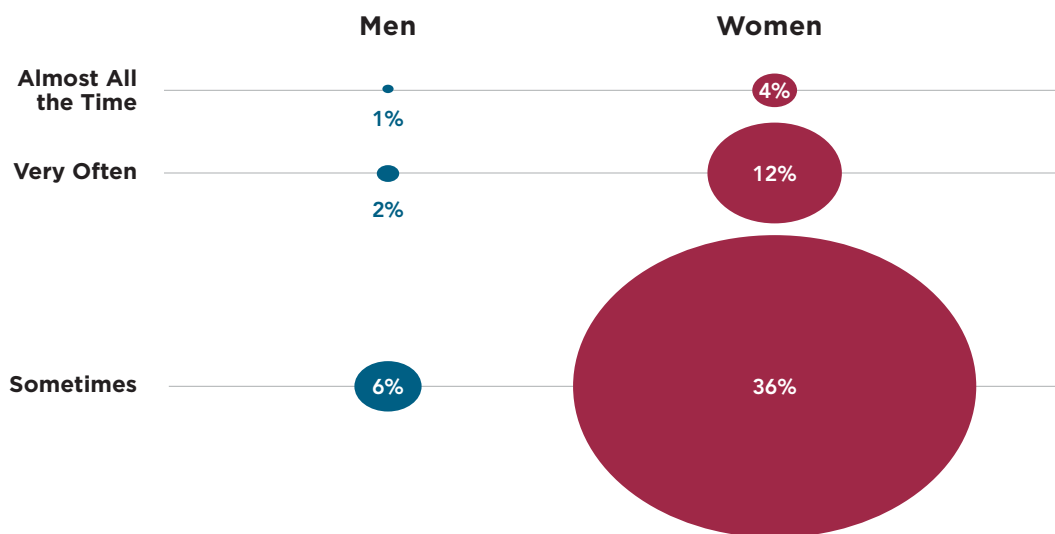
A similar phenomenon exists around “being heard” in work meetings. 43% of White lawyers report feeling heard “almost all the time” in work meetings compared to 33% of lawyers of color. Women lawyers of color are even less likely to feel they are heard “almost all the time” in work meetings: only 25% of women lawyers of color report that experience.

As with attorneys of color, women, even those with considerable experience, often speak of “not being heard” in work meetings. A common, almost stereotypical example of “not being heard” is the experience of offering a suggestion in a group meeting but having it ignored until later in the meeting, when a man suggests the same idea and receives kudos for the suggestion. Unfortunately, our data show that this phenomenon has not abated. Women respondents were significantly less likely to feel they are heard “almost all the time” in work meetings (32% of women compared to 47% of men).

2. Stress at Work Because of Gender

We have heard countless anecdotes and commentary about how women experience stress at work simply on account of their gender. The results from this national Survey reinforce the point: 52% of women respondents feel stress at work on account of their gender, with 16% feeling that stress very often or almost all the time. In contrast, just under 10% of male respondents report stress at work on account of their gender, with only 3% feeling that stress very often or almost all the time.

FREQUENCY OF STRESS AT WORK BECAUSE OF GENDER



D. Putting It All Together

The practice of law entails many stresses and strains, some of which are under a lawyer's control and some of which are not. We all face clients who can be demanding, tensions with colleagues, second-guessing about the quality of our work, worry about billable hours, and myriad other worries.

The Survey, however, has identified an additional stress for some members of the profession, which cannot be ignored: the extra everyday burdens shouldered all too often by lawyers of color and women simply because of their race, ethnicity or gender. Implicit or unconscious biases impact how lawyers of color and women lawyers are faring with respect to recruitment, assignments, evaluations, compensation, being promoted into senior roles and attaining leadership positions. Implicit biases can also affect the perceptions of how committed women lawyers are to their jobs because they may have to focus on children and family at critical times of their careers. There is often unequal access to important networks within a firm or a lack of mentors or sponsors to teach lawyers of color and women “the rules of the road.” Many lawyers of color and women also face the “you don’t look the part” problem, “the idea that the norms of success, ability, and competence are tied to looking a certain way,” or going to a certain school or coming from a certain background.⁷

The Survey shows that too many members of the profession are working in settings that are not laser focused on the necessary strategies to develop a truly diverse group of talented lawyers, who reflect the breadth of backgrounds, training, and experiences that lead to successful teams of lawyers. The data reinforce that the future of the profession—and any organization that employs lawyers—hinges on the ability to retain, advance and include the full range of women and lawyers of color who have entered the profession in large numbers over the past 20 years, and will continue to do so in the future.

By understanding more about the obstacles faced by women and lawyers of color, there will be more effective ways for firms, corporations and other legal employers to frame strategies, policies and practices that are fundamentally more inclusive and equitable than those used in the past—a subject to which we return in our section below about post-pandemic best practices.

V

Expectations and Issues for Post-Pandemic Practice

There continues to be a noticeable level of concern about how the economics of practicing law will shake out over the next two years.



A core focus of **Practice Forward** is to advise and respond to concerns about how the profession will emerge from the pandemic, and whether there will be a long-term impact based on adaptations and changes made during this time. To make those predictions, a large portion of the Survey was directed to the future of law practice: Is it feasible to return to largely office-based work? What health and safety concerns are likely to remain? What technical resources will be required? What will the economics of a post-pandemic law practice look like? How will firms, corporate law departments and other legal employers provide the practice support and personal support that lawyers are demanding?

The results show that lawyers have already accepted a number of changes that took place in the past year, and are not likely to seek a return to many of the pre-pandemic policies and practices.

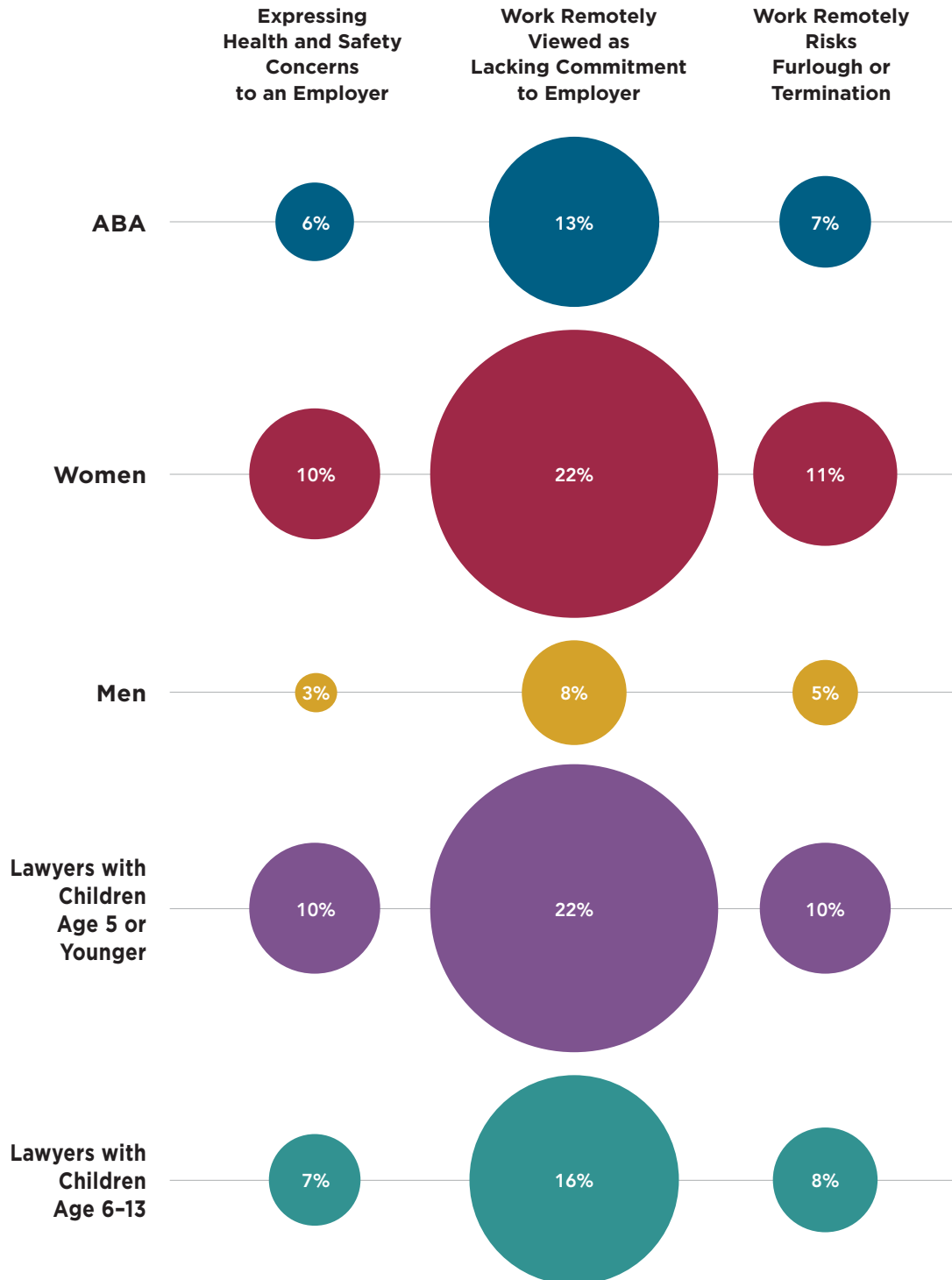
A. Is It Feasible to Return to the Office?

1. Health and Safety

Looking to 2021 and 2022, a large majority of lawyers (74%) were either “not at all concerned” or only “slightly concerned” about returning to the office before a safe and effective COVID-19 vaccine is available, and had similarly low levels of concern about adequate safety protocols being put into effect by an employer, colleagues not following safety protocols like wearing masks and social distancing, or even being inside an office building which may lack good ventilation or have poor security in public places. At the same time, an even larger majority of lawyers (81%) thought it likely or highly likely that their employer will implement appropriate safety procedures in 2021 and 2022.

Women were more cautious about these factors than men but not substantially so. The largest gender difference was over concern about whether colleagues would follow safety protocols, with 20% of women reporting they were very or extremely concerned, compared to 11% of men.

There was a somewhat different result, however, on questions around how employers would *perceive* an attorney’s concerns about health and safety. Although the majority of lawyers were generally not worried about expressing health and safety concerns to their employers, there was a significant gender effect. More women than men reported being “very concerned” or “extremely concerned” about expressing health/safety concerns to an employer (10% of women versus 3% of men); that working remotely would be viewed as lacking commitment to an employer (22% of women versus 8% of men); and that working remotely would create a risk of being put on furlough or having their job terminated (11% of women versus 5% of men). Lawyers with younger children, both women and men, were more likely to be very or extremely concerned about each of these three issues.

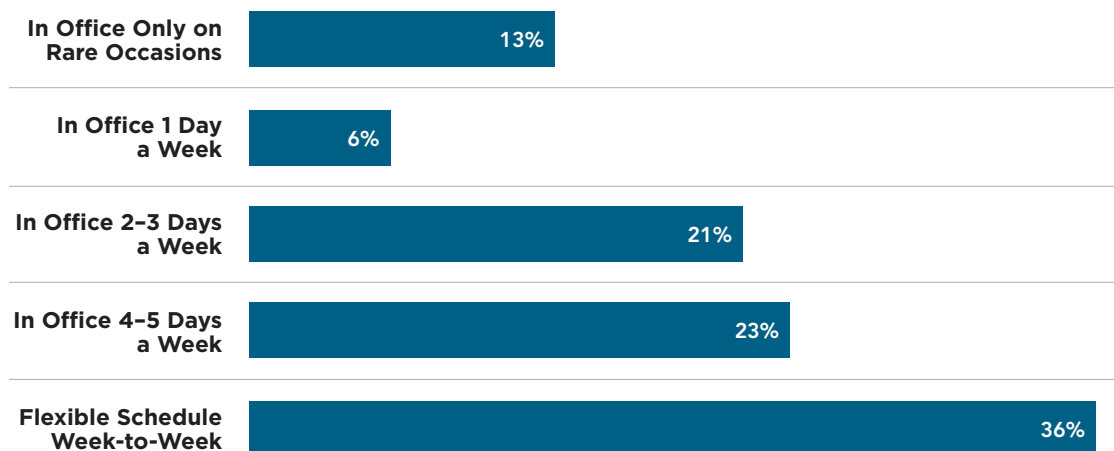
VERY OR EXTREMELY CONCERNED ABOUT:

2. Viability of Remote Working and Resources Needed

We surveyed attorney preferences about working remotely on an ongoing basis into 2021 and 2022, including whether they favor a mix of remote and in-office work. The results differ considerably from how most lawyers worked before the pandemic. The majority of respondents (66%) believe it is likely or very likely that many lawyers in their particular workplace will continue working mostly or entirely remotely in 2021 and 2022. In that context, a sizeable number of respondents—36%—reported that their personal preference is to have the flexibility to choose their own schedule from week to week. The remaining lawyers split roughly evenly between the option of working 4–5 days a week in the office (23%), or 2–3 days a week in the office (21%) or 1 day a week or rarely in the office (19%).⁸

IDEAL MIX OF OFFICE + REMOTE

ABA



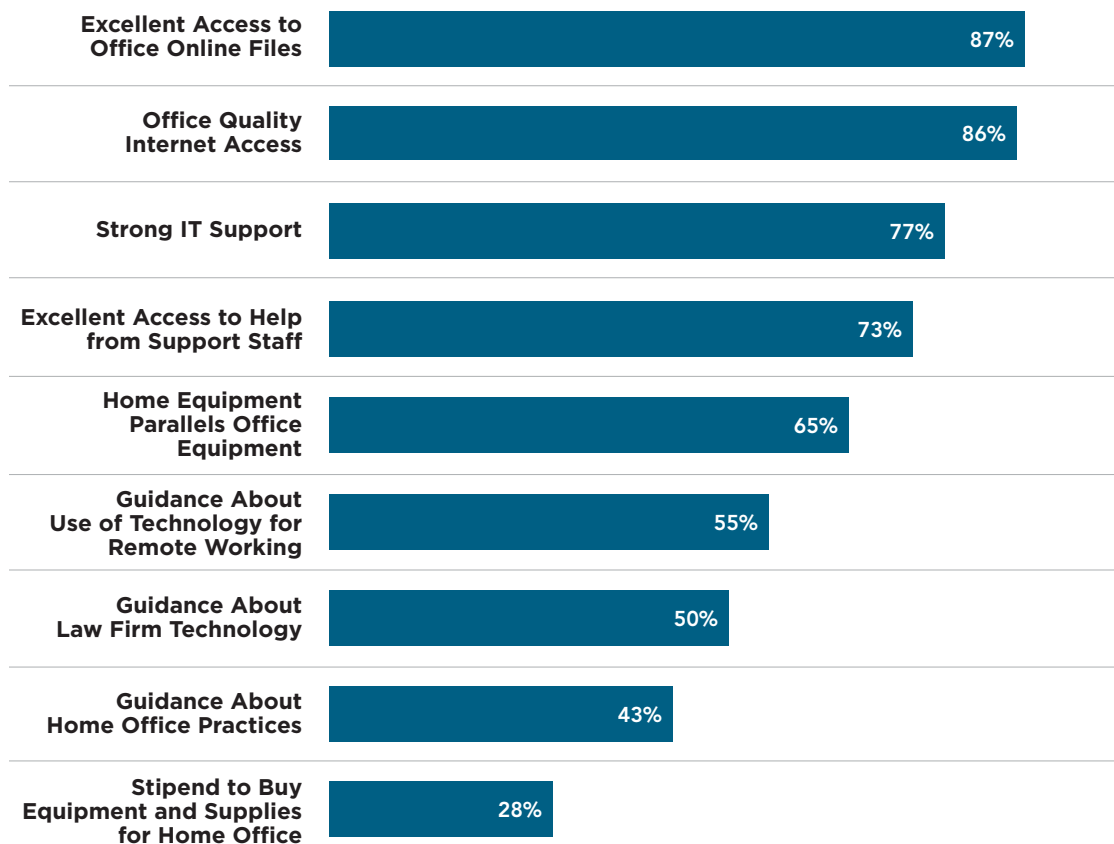
In spite of an expectation of continued remote working, the responses show some uncertainty about how employers will implement a remote working plan. The majority of lawyers anticipate that in 2021 and 2022, there will be “substantially less need for office space.” On the other hand, the large majority of respondents reported that their employer was *not* considering an office space plan without dedicated physical offices, including respondents in leadership roles (79%) and those not in leadership roles (84%). There is no doubt some tension between the desire to work remotely and the cost of renting office space not used on a full-time basis. Hoteling or shared offices are not new concepts, although they are much more typical of corporate offices than law firms. Balancing a number of factors, we will not be surprised to see law firms taking a more serious look at the use of their space and dedicated private offices.

We also asked a series of questions about who should bear the cost of remote working if it continues into 2021 and 2022. The large majority (77%) would consider maintaining a defined home office. A number would consider seeking reimbursement from an employer for equipment or technology (40%) or office space (11%). A minority (23%) would likely consider living beyond commuting distance from the office. Some 6% of the sample would consider paying for office space close to home. These responses suggest that many lawyers developed an affinity for remote working which, pre-pandemic, was simply not the norm.

At the same time, lawyers have strong feelings about the technical resources needed for post-pandemic practice. The large majority of lawyers report that it is either “very important” or “extremely important” (1) for home equipment to parallel office equipment, such as printers/scanners, computers, and ergonomic equipment (65%); (2) to have “office quality internet access” (86%); (3) to have “excellent access to office online files” (87%); and (4) to have strong IT support (77%). A number of lawyers (28%) viewed a stipend to buy equipment and supplies for a home office as very or extremely important. Along these same lines, a large proportion report it would be helpful in their practice going forward to have guidance about the use of technology for remote working (55%), guidance about law firm technology (50%), and guidance about home office practices (43%). In this vein, lawyers also value “excellent help” from support staff: 73% rated this help either “very important” or “extremely important” for an employer to provide.

Many lawyers developed an affinity for remote working which, pre-pandemic, was simply not the norm.

RESOURCES LAWYERS SAY THEY NEED FOR REMOTE WORKING



Lawyers are also optimistic that their employers will provide the enhanced technical support needed for remote working, with 72% of respondents reporting that such support is either likely or very likely in 2021 and 2022.

B. Concerns About the Economics of a Post-Pandemic Law Practice

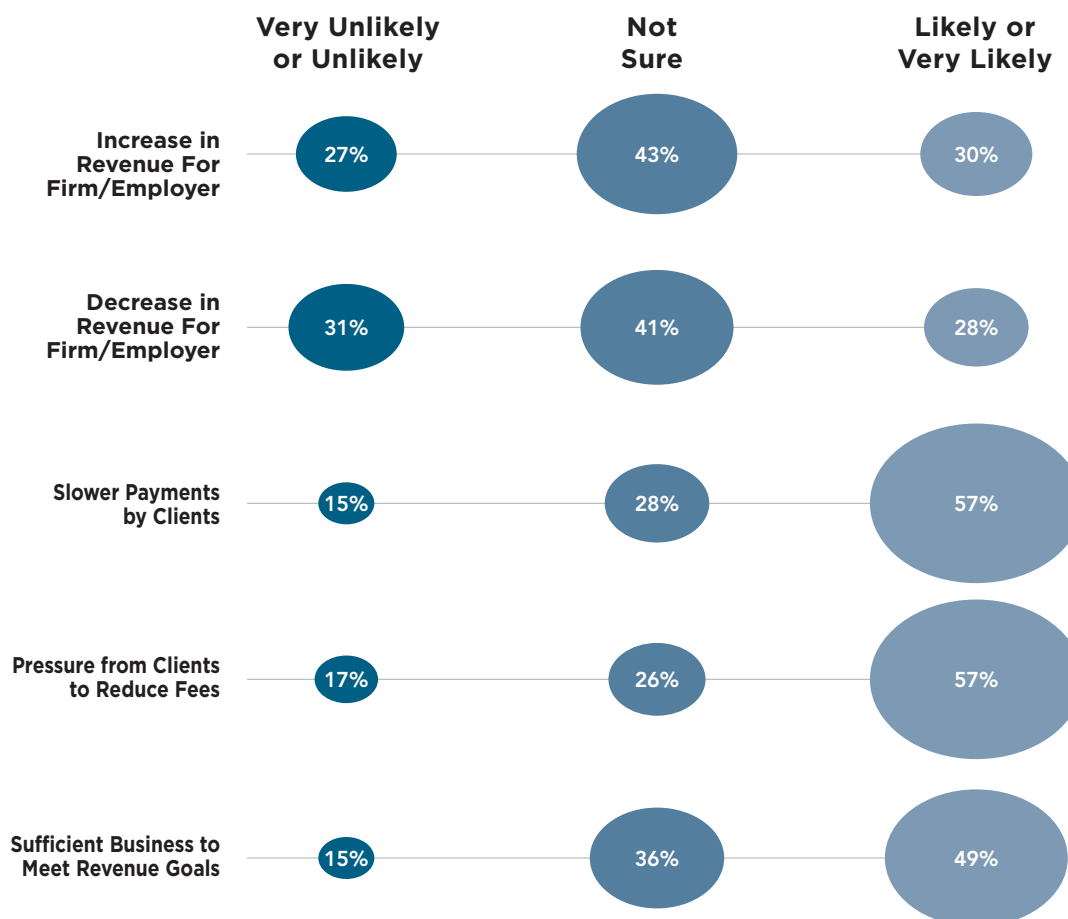
We asked a series of questions to elicit how lawyers feel about the business of law in their specific workplace as they emerge from the pandemic in 2021 and looking ahead to 2022. The majority of respondents expressed mixed feelings about what the near future would bring. First, most lawyers anticipate that their employer would not make reductions in force for lawyers,

either at the junior or senior level. Regarding non-lawyer support staff, there are two dominant and conflicting responses: 42% of lawyers think that such reductions in force are likely or very likely at their workplace, while another large segment, 35%, anticipate that such reductions are unlikely or even very unlikely.

There were also mixed predictions about increased or decreased revenue for a lawyer's firm or employer. Roughly 30% of lawyers anticipate that revenue is likely or very likely to *increase* in the next two years, while 27% believe that revenue is unlikely or very unlikely to increase, and 43% are not sure. Predictions about a *decrease* in revenue over the next two years show a mirror image: about 28% of lawyers believe that a decrease is likely or very likely, 31% believe that a decrease is unlikely or very unlikely, and 41% are not sure.

The same kind of dichotomy exists around the issue of meeting revenue goals. About half of all lawyers (49%) believe it is likely or very likely that their employer will have sufficient business to meet revenue goals in 2021 and 2022, while the other half (51%) are not sure or believe it is unlikely or very unlikely that their revenue goals will be met. In the same vein, most lawyers (57%) believe that it is likely or very likely that clients will pay more slowly, and 57% believe that it is likely or very likely that there will be increased pressure from clients to reduce fees.

ECONOMIC CONCERNS OF POST-PANDEMIC LAW PRACTICE



In short, there is no one consensus among respondents as to how the business of law will emerge from the pandemic. While there is a level of optimism among some lawyers in firms and other work settings, there continues to be a noticeable level of concern about how the economics of practicing law will shake out over the next two years.

C. Will Employers Provide the Support That Practicing Lawyers Are Asking For?

Many respondents report a preference for continued remote working for at least some if not most of the time. However, for remote working to truly be effective and successful, a firm or corporation will need to step up and provide resources that were not typical before the pandemic. While there can be substantial cost savings from leasing less office space and using fewer office-based resources, it would be a mistake to view those savings as a windfall. Clearly, employees are looking to legal employers to invest in providing services and resources that are essential to making remote working successful.

We asked a wide range of questions about the resources that lawyers believe they need going forward, and focused those questions into three areas: what is needed for personal well-being, how to sustain employee engagement, and adjustments to firm-wide or company-wide policies and practices.

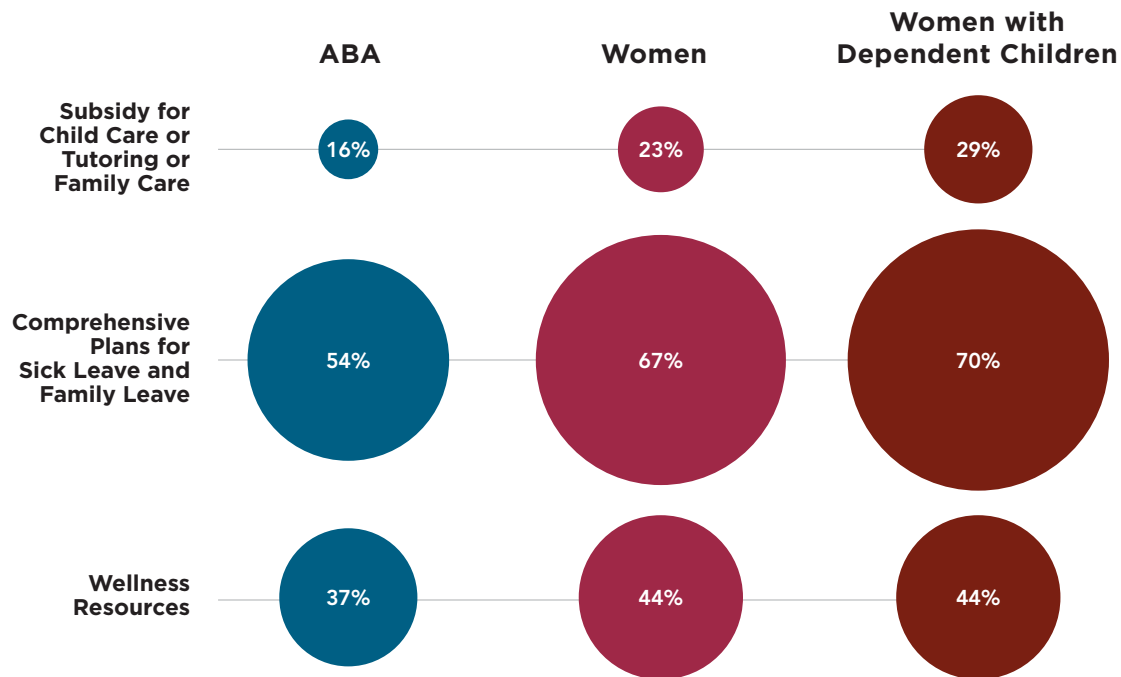
1. Personal and Family Well-being

Ten years ago, there was scarcely any focus on the need to support well-being and mental health in the legal profession. Today, the pandemic has substantially heightened both the awareness of and need for employers to provide policies and programs that target well-being and mental health. We examined three aspects of personal and family well-being: subsidies for child care, tutoring, or other family and elder care; comprehensive plans for sick leave and family leave; and wellness resources.

A substantial number of lawyers (34%) report that guidance about enhancing mental health and well-being would help them in the practice of law going forward. Over one-third of respondents (37%) think that wellness resources are “very important” or “extremely important.” Interestingly, 33% of respondents report that guidance about enhancing mental health and well-being would help them in the practice of law going forward. More women lawyers (44%) than men (33%) thought wellness resources were very or extremely important.

Comprehensive plans for sick leave and family leave were of even greater interest. Over half of ABA members (54%) view the availability of those plans to be very or extremely important. For women, the percentage rises to 67%. Of less interest was obtaining a subsidy for child care, tutoring, or family care: 16% view that option as very or extremely important, although lawyers with dependent children (20%) and especially women with dependent children (29%) thought a subsidy was very important.

WELLNESS AND FAMILY RESOURCES: VERY OR EXTREMELY IMPORTANT



At the same time, while about 20% of lawyers report that better resources for working parents would help them in the practice of law, the need is substantially higher for three significant subgroups: 32% of women generally, 59% of women with children, and 81% of women with young children age 5 or younger, would like better resources for working parents.

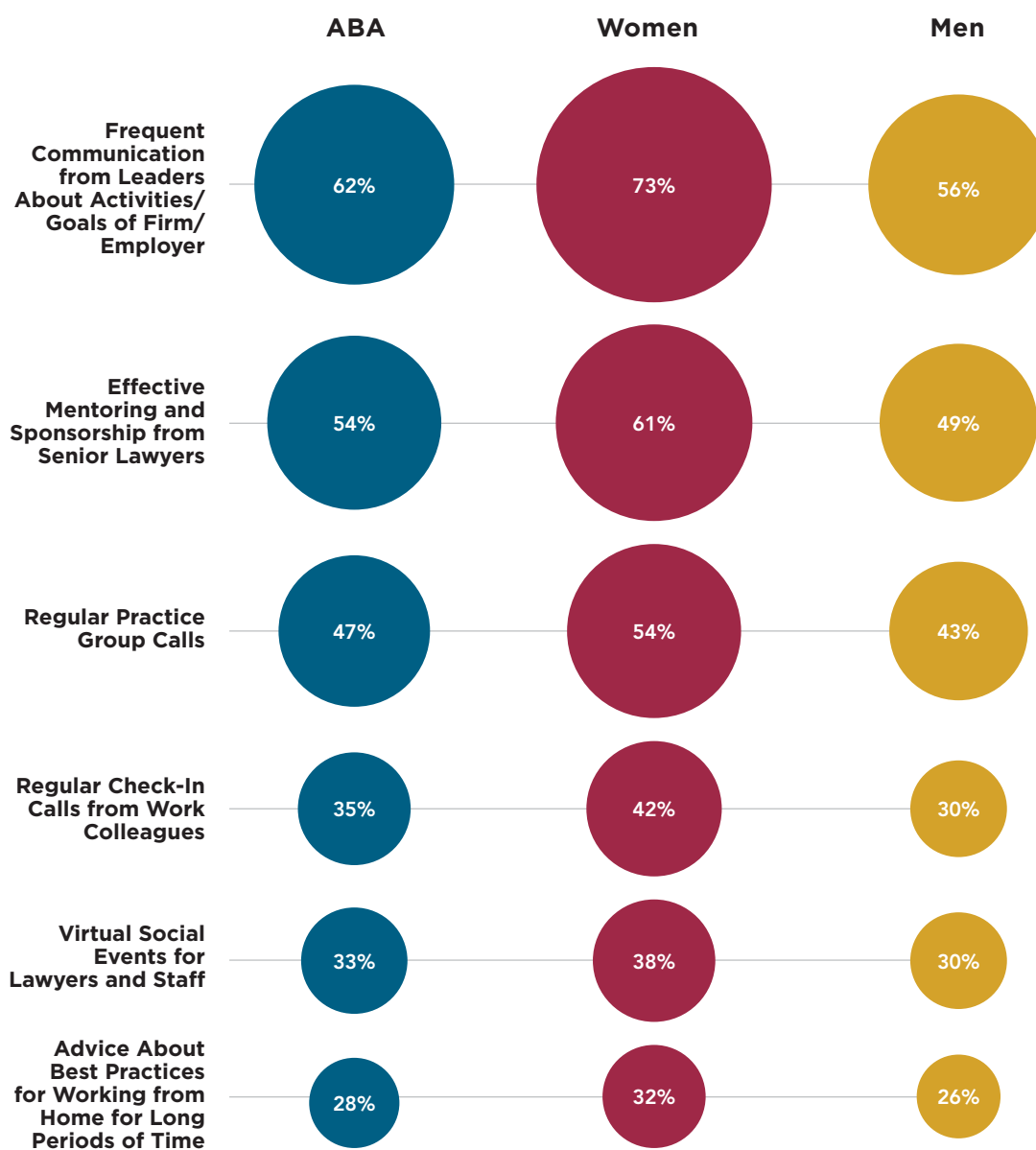
2. Employee Engagement with Their Firms, Companies, and Other Employers

For a number of years, employers have focused on the concept of employee “engagement,” the idea that employees’ effectiveness depends on their level of commitment to their work, enthusiasm about the workplace, and connection to their organization. Engagement is a two-way street, with the actions, commitment and resources provided by the employer a key driver of employee engagement, at both the organizational level and the level of day-to-day management and supervision.

With many anecdotal reports about reduced employee engagement during the pandemic, including in the legal profession, we looked to measure what types of support from their workplace will be needed by lawyers in 2021 and 2022.

The results show that lawyers value a culture that fosters engagement through personal connections by leaders with their teams; interest in lawyers as people, not simply as fungible professionals; and an individual's sense of inclusiveness and value. More specifically, many respondents report that it is either "very important" or "extremely important" for their firm or employer to provide: frequent communications from leaders about firm activities and goals (62%); effective mentoring and sponsorship from senior lawyers (54%); regular practice group calls to see what practice group members are doing (47%); regular check in calls from colleagues about how the lawyer is doing (35%); virtual social events for lawyers and staff to get together and to keep people engaged (33%); and advice about best practices for working from home for long periods of time (28%).

EMPLOYEE ENGAGEMENT PRACTICES: VERY OR EXTREMELY IMPORTANT



Women lawyers were particularly attuned to the need for their employers to engage in these ways. A greater proportion of women than men reported that these employer actions were very or extremely important. We take note that women especially value frequent communication from leaders about activities and goals, effective mentoring and sponsorship from senior lawyers, and regular practice group calls. Lawyers of color were generally at the same levels as White lawyers on these responses, except that lawyers of color were significantly more likely than White lawyers to view effective mentoring and sponsorship from senior lawyers as very or extremely important (61% for lawyers of color, 52% for White lawyers).



Lawyers value a culture that fosters engagement through personal connections by leaders with their teams.

3. Policy Adjustments to Be Made by Firms and Corporations

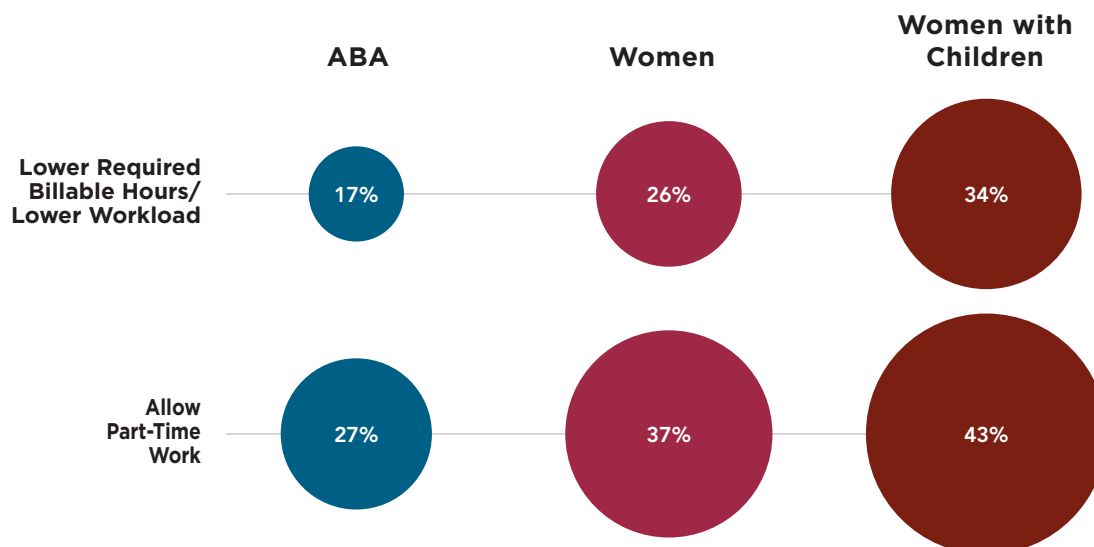
There is still another aspect to successful post-pandemic practice: employer policies and practices that foster high quality work while at the same time providing the information, flexibility and support that a diverse profession requires.

We asked about certain of these factors in a series of questions looking forward to 2021 and 2022, specifically, how important is it to lawyers for employers to (1) lower required billable hours or workload; (2) allow part-time work; (3) have excellent access to help from support staff; (4) use written criteria for advancement; (5) have a clear pathway for advancement to a more senior level; (6) provide opportunities for training and development or professional skills; and (7) give support for business development.

Somewhat to our surprise, the majority of respondents did not consider a policy that lowered required billable hours to be all that important: only 17% of all respondents thought the policy was “very” or “extremely” important to provide. Consistent with this view, however, 68% of respondents think it is unlikely or even very unlikely that their employer will reduce the number of required billable hours or overall workload in 2021 or 2022.

However, there were significant differences for women, and, in particular, women with children. 26% of all women respondents and 34% of women respondents with children reported that a lower billable hours policy was “very” or “extremely” important. We note that women lawyers who are shouldering the disproportionate burden of child care and home schooling are more anxious about meeting billable hour requirements and that their performance evaluations and compensation will be harmed because of an inability to manage their workload during the pandemic and meet client demands.

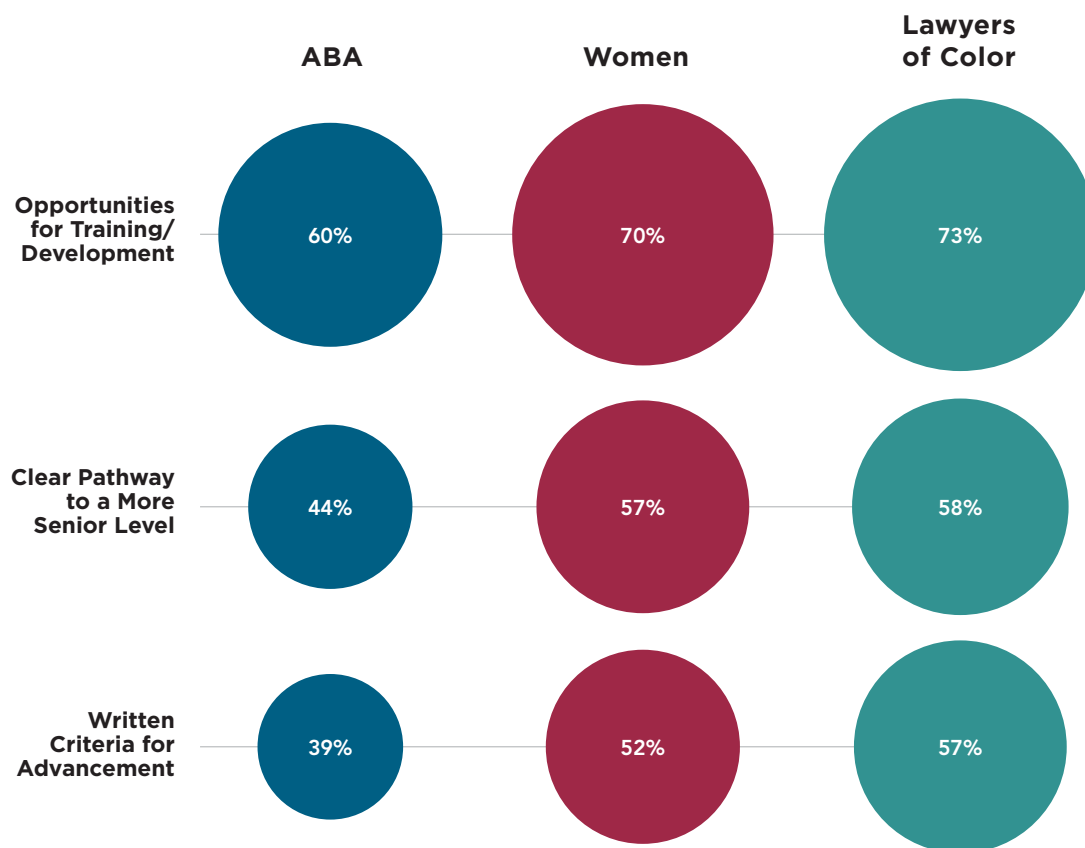
REDUCED WORKLOAD OR PART-TIME WORK: VERY OR EXTREMELY IMPORTANT



Allowing part-time work, however, was important to many lawyers: 27% of respondents viewed that policy as “very” or “extremely important” to provide. Part-time work had even greater importance to women (37%) and women with children (43%).

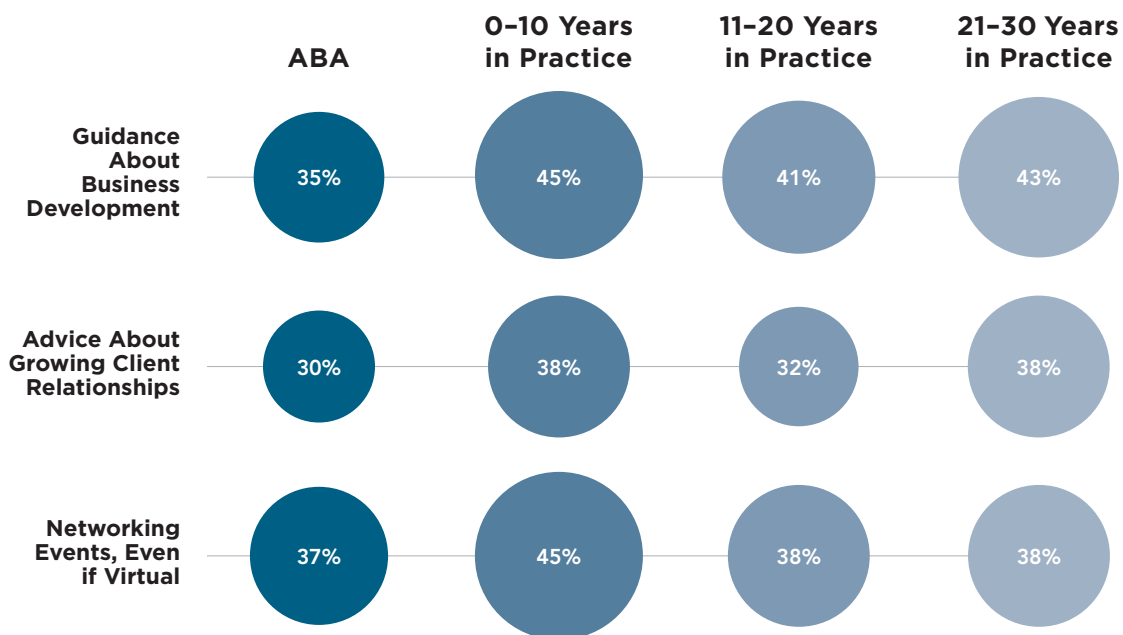
The majority of lawyers also responded that it is “very important” or “extremely important” that part-time policies are transparent, and that employers provide written criteria for advancement, a clear pathway to advancement to more senior levels, and opportunities for development of professional skills. Moreover, a greater number of women and lawyers of color hold the view that these policies and practices are “very” or “extremely important.” At the same time, there are questions about whether paths to advancement will be readily available. Some 14% view it as likely or very likely that there will be a reduction at their workplace in the number of junior lawyers. It is also the case that the majority of lawyers (62%) believe it is either unlikely or they are not sure that their employers will provide more training and development of junior lawyers.

PATHWAYS TO ADVANCEMENT: VERY OR EXTREMELY IMPORTANT



Lawyers also say they need help with business development. Some 59% of respondents view support for business development as very important or extremely important. Over one-third of all lawyers (35%) report it would help them in the practice of law if they received guidance about business development; and 30% would like advice about growing client relationships. Over one-third of respondents (37%) report that networking events, even if virtual, with other members of the bar in the same area of law would help them in the practice of law. An even larger percentage of young lawyers view networking as a key to their practice.

WOULD LIKE HELP GOING FORWARD WITH:



VI

Moving Forward with Best Practices for Employers

There is no one policy that fits all, and soliciting ideas from lawyers through town halls, surveys, and pulse checks will no doubt reveal best practices that are a good fit for the culture of your workplace.



As this Report is being written, the profession, along with the entire country, is poised to move past the COVID-19 pandemic and forward to a work environment that all agree will

not be the same as before. Views about what is essential for the practice of law are very different now than they were a year ago. No longer do the vast majority of lawyers feel that they must go into the office on a daily basis. Many lawyers have now become more adept at using office technology in their homes and have come to value remote working. At the same time, legal employers have become increasingly aware of the need to act on their commitment to diversity, equity, and inclusion for under-represented groups as a core value of their organization's culture. Further, the concepts of well-being, engagement, burn-out, and similar social psychological constructs have entered mainstream discussions throughout the profession. It is fair for all lawyers to ask: What type of workplace will provide the greatest satisfaction, allowing organizations and their lawyers to thrive?

This Survey provides data-driven recommended best practices that we believe are essential to move the legal profession forward so that lawyers are engaged with their work, have the support they need to succeed, and work in settings where leaders advance policies and practices that attract and reward a diverse array of professionals. We recognize that many different policies and initiatives can be adopted in any given workplace, depending on the employer's particular culture and objectives. In light of the Survey results, however, we are especially focused on the following best practices.

It is fair for all lawyers to ask: What type of workplace will provide the greatest satisfaction, allowing organizations and their lawyers to thrive?

1. Insist on Leadership That Is Engaged, Transparent, and Accountable

Leaders help shape the culture of their organizations. As we stand on the cusp of the post-pandemic era, now is the time for leaders to pause and rethink the structure, policies and practices of their firm, department or organization. Core questions begin and end with the fundamental values that bind the organization. These include:

- ▶ What type of culture and values do we want in our everyday practice of law?
- ▶ What do we want to look like two, three, and five years from now?
- ▶ How we will get there?
- ▶ Who will be accountable for making sure that the policies and practices that we value are implemented and are experienced the way we intend?

- ▶ How will we move forward to achieve meaningful diversity, equity, and inclusion?
- ▶ What types of communications should take place with lawyers and staff?
- ▶ What goals and expectations do we have for our lawyers, and how can we help them enhance their performance and job satisfaction?
- ▶ What are the types of policies that can accommodate flex-time and part-time, and still allow for advancement?
- ▶ Is our compensation system aligned with our values?
- ▶ If we downsize our office space, and move away from assigned offices, how will this impact the culture of the firm? What steps will be needed to maintain our culture?

These are not always easy questions for leaders to ask and they will undoubtedly elicit a wide range of responses. But organizations whose leaders reach out, listen, and act on what they hear will be greatly advantaged by having engaged in this dialogue, which should help foster a more productive and collegial workplace. Any review will benefit by taking advantage of the Survey results, and decisions should be based on the factors that lawyers feel are essential to their practice and their well-being. Large organizations may wish to conduct their own internal study to better understand their culture and their lawyers' specific concerns, and thus tailor more effective strategies and goals for the future. If a broad approach is not feasible, it is worth engaging in a narrower analysis, such as focusing on a core policy. For example, the pandemic has underscored the importance of collaboration, communication, and teamwork. Going forward, organizations need to better understand how to foster resilient, effective and gritty teams that can work well together, rather than a culture where lawyers are siloed, rarely interact at a personal level, and are prone to hoarding work or clients for themselves.

As we stand on the cusp of the post-pandemic era, now is the time for leaders to pause and rethink the structure, policies and practices of their firm, department or organization.

2. Make Decisions Which Will Have a Real Impact on Diversity, Equity, and Inclusion

The Survey data show that legal organizations should employ strategies and policies that will actually make an impact on achieving greater diversity, equity, and inclusion. The Survey found striking differences in how lawyers view their workplaces and the opportunities to succeed and advance, depending on whether they are male or female, and whether they are White or a lawyer of color.

It would be a mistake to believe that leaving the pandemic behind will mean leaving behind the challenges and barriers that continue to confront women and lawyers of color. It was distressing that the Survey revealed that over 47% of lawyers of color feel stress at work on account of their race or ethnicity, and 52% of women lawyers feel stress at work on account of their gender. Our data should raise alarm bells that there is a real potential for an exodus of diverse talent if implicit biases and differential treatment are not redressed.

It is time for organizations that do not have a meaningful number of women or lawyers of color at senior levels to ascertain the reasons why, and determine what they will do to remedy the disparity. The demography of this country, and the demography of graduating law school classes in the last 10 years and going forward, means that an organization that does not retain and advance a critical mass of women and lawyers of color into senior positions will very soon—in the next five years and certainly the next 10—look entirely different from the profession as a whole and from their clients. Organizations that lack diversity will not benefit from the better decision-making that diverse teams provide, and will lack the robustness to achieve strong economic results.

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There are many strategies, benchmarks, metrics and goals to choose from, and leaders and their organizations can achieve meaningful progress if they truly commit themselves to the objective of increasing diversity, equity, and inclusion.

3. Have Frequent, Transparent, and Empathetic Communications

A striking set of Survey results center on how lawyers feel about their employers and the reduced level of engagement between lawyers and their firm, corporate law department or other organization. As discussed above, there has been increased stress for lawyers with respect to evaluations, compensation, recognition, and job security. Many lawyers felt not only overwhelmed with everything they had to do but also reported a lack of support from their employers. That is especially true for women lawyers with children, who are disproportionately shouldering child care and family care along with home schooling. They want their employers to be more supportive and show true understanding of the challenges they are facing.

The fact that billable hours and workloads during the COVID-19 crisis were, for the most part, not reduced while salary reductions or furloughs took place at many firms, simply heightened the sense of disillusionment and disenchantment. Communications on an ongoing basis by firm leaders can keep lawyers connected with their work and their workplace even in tough times, and should be a best practice at all times. More specifically:

- ▶ A key to effective engagement is a leader's transparent and clear communications to apprise attorneys and staff of the organization's current and future goals, opportunities, and challenges.
- ▶ Leaders who communicate with empathy allow lawyers and all employees to feel valued, appreciated, and understood. Supervising attorneys, department chairs, and practice group leaders should reach out to all team members to ascertain whether they need any accommodations in meeting work deadlines. Regular pulse checks will demonstrate real caring and, in and of itself, just asking how employees are feeling will boost morale and build trust and loyalty. Such communications help to reduce anxiety and promote productivity.
- ▶ As offices re-open, it will be important that leaders communicate that they will be prioritizing health and safety concerns and will be taking all necessary precautions. Specific guidance should be provided as soon as possible about when lawyers and staff will be expected back in the office. By announcing clear opening plans, lawyers and other employees will have certainty and can make all necessary arrangements for returning to the office. Leaders should also communicate available options for lawyers to continue working remotely, particularly since, as our data shows, many women lawyers have concerns about health and safety in returning to the office.

4. Create Clear Written Policies About Work Expectations

The pandemic has amplified the need for written policies to help set clear boundaries and address work-from-home expectations. This is not simply a matter of setting standards for billable hours, or times when a lawyer is expected to be available during the day. The Survey results paint a picture of too many lawyers experiencing never-ending demands and deadlines that are not possible to meet or which can be met only at great personal cost. It appears that the absence of office-based work has eliminated the former understanding of a “work day” and “work week,” instead imposing the assumption of availability on a 24/7 basis. The fact that so many law firms and corporations have lawyers in more than one time zone, or internationally, makes the problem even worse. And a culture of “I must answer every e-mail or call right away” or “My job always has to come first” can hardly lead to thoughtful, high-quality work, no matter how talented the lawyers are. It will also result in increased stress, anxiety, and burnout.

One set of best practices is to implement written policies to establish reasonable times for meetings, phone calls, and responses to emails received outside normal business hours and to encourage lawyers to take vacation days and time off. There is no one policy that fits all, and soliciting ideas from lawyers through town halls, surveys, and pulse checks will no doubt reveal best practices that are a good fit for the culture of your workplace. One employer we spoke with recently implemented a “quiet time” policy, allowing employees to designate an entire week when they were not expected to respond to emails or telephone calls. This practice was both well received and found to be extremely effective. As policies are written and revised, feedback loops should be developed as well as other methods of communication to ensure that leaders are receiving ideas, reactions and valuable input from their lawyers and staff.

5. Take the Long View About Retaining Lawyers Through Part-Time and Flex-Time Policies

The pandemic has highlighted a number of outdated policies and practices that are simply inimical to the career interests of lawyers and the interests of their employers in attracting, developing and maintaining a cadre of diverse and highly talented lawyers. Based on the responses to questions we asked about billable hours and part-time work, we suggest it is time to seriously review and revise part-time and flex-time policies.

It has long been the case that while most legal employers allow lawyers to work part-time or flex-time, the majority of lawyers who take advantage of these policies are women. Unfortunately, their advancement opportunities have often been limited, as they are frequently viewed as simply being on the “mommy track.” Likewise, male lawyers who want to take the opportunity to work on a flex-time or part-time basis may also face implicit biases and adverse career consequences.

It is clear from the Survey that lawyers want the flexibility to choose their own schedules. Remote work has been de-stigmatized and it will become part of every legal organization’s

culture as many lawyers may never return to the former five-days-at-the-office model. A more modern approach to flex-time and part-time is especially critical because women now make up half or more of law school classes, and the absence of flexible work policies poses a genuine impediment to recruiting and retaining women lawyers. When the pandemic eases, and legal employers are once again hiring at the pre-pandemic rate, many lawyers will have the opportunity to decide whether to stay or leave. For women lawyers, we predict that a driving factor will be the extent to which an employer allows part-time and flex-time work with specific pathways for advancement to partnership or more senior levels of an organization.

That same degree of flexibility should apply when a lawyer may wish to take a sabbatical or leave of absence, with the expectation that they will return to the job after a specified time. It strikes us as short-sighted for employers to balk at allowing their highly trained and highly skilled lawyers to take a personal leave for six months, or a year or even two years, and then return to the organization. The lawyers that large firms reject because of a time gap in their employment end up benefitting small firms and companies, which hire those lawyers when they return to the work force. We expect opportunities for lawyers to work outside of the law or in non-traditional law jobs to grow, putting increased pressure on firms and companies to be creative and flexible about their leave policies.

With these considerations in mind, and as the profession moves forward, we recommend that:

- ▶ Leaders should implement policies that encourage the use of flex-time and part-time policies, and recognize that lawyers' careers span many years and are worthy of the organization's substantial investment in them. Lawyers who work part-time or on a flex-time schedule want to be assured of opportunities to handle important matters; to be considered for business development and training; and remain on a path for partnership and other advancement.
- ▶ Leaders should not only communicate their support for workplace flexibility, they should themselves model flexibility in their own work schedules. This will send a strong message to their subordinates and make it less likely that lawyers, especially women with children, will elect to leave their organization or consider abandoning the profession altogether.

The pandemic has highlighted a number of outdated policies and practices that are simply inimical to the career interests of lawyers and the interests of their employers

- ▶ While many Survey respondents did not consider reduced billable hours to be important, 26% of women and 34% of women with children viewed the reduction of billable hours or workload to be “very” or “extremely” important. Given the many challenges that lawyers with children have faced during the pandemic, at a minimum, legal organizations should consider whether billable hours should now be de-emphasized or possibly even eliminated as a significant criterion in performance evaluations and compensation. Indeed, mothers are more likely to worry about their performance and whether they will be judged negatively because of their child care responsibilities. Carefully constructed flex-time and part-time policies will allow lawyers to work where and when they can be most productive.

6. Use Metrics to Measure the Success of Policies, Practices, and Efforts to Implement Change in the Workplace

The old adage continues to be true: You can’t change what you don’t measure. Metrics are now more important than ever to track how lawyers are faring in terms of the opportunities they receive from their employer to work on important matters for significant clients, as well as opportunities for training, client “pitches” and development, “stretch” assignments, compensation, and prospects for advancement. As the Survey data show, women and lawyers of color have much higher levels of concern about their advancement, and employers should use metrics to assess how they are actually faring. Employers are well served by having a solid empirical basis to assess whether disparities exist, their extent, and whether efforts to improve are actually working.

For law firms, metrics are especially important to monitor associate development. Firms typically lose a large majority of their associates, including large numbers of women and lawyers of color. Core metrics are even more important where there is a substantial amount of remote working, which increases the risk of an “out of sight, out of mind” approach to personnel. All too often, an associate can simply be overlooked, particularly when in-person meetings and interactions have been diminished or eliminated. As a prime example, the Survey found that many women lawyers with children believe that they are being ignored for assignments or other development opportunities.

Questions to monitor in a law firm setting include: Are all associates getting the types of experiences they will need to advance? Are they working directly with clients? Taking and defending depositions? Attending hearings? Taking key roles on deals? Working directly with a partner? Do they have sponsors and mentors? Have they been told what skills they need to advance? Are they being groomed to take over client relationships?

In a corporate or organizational setting, similar questions need to be asked, appropriate to the dynamics of the workplace. These questions may include: Are the lawyers getting regular and meaningful feedback about their work? Does feedback include a career path to promotion? Is the lawyer getting stretch assignments? Does the lawyer get exposure to business clients? Is the lawyer

in charge of a project that provides leadership and supervisory experiences? Metrics are also necessary to examine decisions about who may be laid off or furloughed, to ensure there is no disproportionate impact on women and lawyers of color.

Other useful metrics include data about which lawyers are engaged as sponsors and mentors, and which lawyers have meaningful sponsors and mentors to help advance their careers. Who is taken on client pitches and subsequently assigned work? How is credit for a new matter or client allocated? Who is moving up to the next level of compensation? To leadership roles? By carefully tracking these data, an organization can develop a clearer picture of how lawyers are actually progressing, so as to ensure that the results comport with the organization's goals and expectations.

7. Reassess Compensation Systems

The pandemic has provided legal organizations with a unique opportunity to reconsider and re-evaluate their compensation policies, what those policies should reward, and how they are to be implemented. We believe that compensation systems should mirror the culture of the firm. For example, if the firm wants to encourage collaboration, cross-marketing in the origination of business, and teamwork on matters once they are brought in the door, the firm's compensation system should reward those who demonstrate those attributes. Likewise, good firm citizenship should be rewarded to encourage mentoring and sponsorship, training lawyers, work on behalf of firm committees, and taking on *pro bono* matters.

Significantly, many law firms are reassessing their compensation systems in order to place a greater emphasis on efficiency, quality of work, and teamwork. By according less significance to billable hours in performance reviews and compensation, and ascribing more importance to the quality and efficiency of the work performed, law firms will be acting in greater conformity with their clients, who are increasingly moving beyond the billable hour and looking to alternative fee structures that reward efficiency and high-quality work.

Finally, especially for partners, law firms need to communicate the specific factors that determine compensation. All partners should be apprised of the "rules of the road" for the determination of income and bonuses. The use of a transparent, metric-based compensation system can also assist in the equitable allocation of origination credit and help to ameliorate the

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long-standing and growing pay gap between male and female partners, which increases with seniority and has led to the continued attrition of experienced women lawyers.

8. Provide Greater Parental Resources and Support

Better support for working parents is essential. Indeed, 42% of women Survey respondents live with one or more dependent children at home, with the majority of them living with children younger than high school age. Lawyers with children, and especially mothers with young children, are facing daunting hurdles as they juggle work, schooling, and child care responsibilities in the virtual work environment. As organizations continue with remote paradigms, they would be well-advised to survey their lawyers to identify the types of resources that would be most helpful and use feedback as part of any decision-making.

Survey respondents, particularly women with children, want to see their legal organizations adopt innovative resources and policies, including: back-up child care and tutoring support; stipends or bonuses to help defray child care costs and help with elder care responsibilities; parental support workshops; adding more months of paid parental leave that can be taken to cover child care gaps; and adding more days to personal time off. Seeking input from lawyers about how best to address the challenges they face will help to determine how resources can be reallocated to assist them.

Better support for
working parents
is essential.



We are aware, of course, that there are varying levels of cost involved in providing benefits like those listed above, and it may not be feasible for small firms to provide them. Our perspective is that the investment made in providing these resources will pay dividends because it will reduce attrition, increase productivity, boost morale, and help in recruiting talented lawyers who see an organization dedicated to their lawyers' professional and personal well-being.

9. Strengthen Wellness and Mental Health Programs

Practicing law has always been difficult and stressful, and the Survey found that lawyers are feeling higher levels of anxiety, depression, and even burnout due to the pandemic. As our data show, today's lawyers, more than ever before, expect employers to provide wellness resources, including guidance about enhancing mental health and well-being, additional support for working parents, and personal outreach by their employers. A number of resources can be provided at relatively low cost to a firm, such as: (a) workshops or lectures by specialists in techniques for well-being; (b) a platform for working parents to share ideas and group-solve problems; (c) social events for groups of lawyers, such as a happy hour or a cooking lesson. There are literally dozens if not hundreds of websites and publications about what employers—including law firms—can do to improve employee wellness and reduce stress. Employee well-being is often a direct reflection of the organization in which a lawyer works. Invest in ways to build more collaborative and resilient teams, drawing on other lawyers with subject matter expertise.

Creative and innovative wellness programs have been implemented in many legal organizations. For example, some have held meditation and mindfulness programs and organized exercise and yoga classes. Organizations can also promote third-party counseling services. It may be beneficial to offer these resources in the context of affinity groups within an organization. The ABA Practice Forward website provides a myriad of wellness resources, as do many state and local bar associations.

Today's lawyers, more than ever before, expect employers to provide wellness resources, including guidance about enhancing mental health and well-being, additional support for working parents, and personal outreach by their employers.

10. Provide Excellent Technical and Administrative Support for Remote Work

The Survey results show that there are many lawyers frustrated with the lack of “excellent” technical and administrative support from their employers. All of the bits and pieces of technology gone wrong can combine to create hours of frustration and lost time. For example, many lawyers have experienced problems with Zoom calls on unstable home internet connections, which were not designed for use by several people simultaneously working in the same household. There are many other technical problems that have come to the fore, such as working with administrative, secretarial or paralegal staff who are themselves working at home with poor access to firm systems; working with equipment that is not office quality; experiencing difficulty accessing online files, and more. If the profession is to move forward to more remote working, employers need to provide both state-of-the-art technology and readily available staff to help out when glitches arise. It could, for example, be a good investment for firms to provide stipends that help lawyers, as well as staff and paralegals, to obtain the resources that they need to sustain a home office, such as a printer and other supplies.

VII

Recommendations for Individual Lawyers



*Success at work depends not only on a
supportive employer but also actions
by an individual lawyer.*

Success at work depends not only on a supportive employer but also actions by an individual lawyer. Here are several suggested best practices about what individual lawyers can do to keep moving forward in times of stress and uncertainty, and to ensure a successful, productive, and long-term legal career.

1. Set Realistic Expectations for Yourself and Others Around You

Adjust your goals for what can reasonably be accomplished, especially if you have primary responsibility for child care or helping elderly relatives. Let your supervisors or clients know of any particular personal issues you may be dealing with that may be interfering with completing work assignments. That way, there will be no surprises and an agreed-upon timetable can be fashioned.

2. Negotiate Boundaries at Work and at Home

If you are receiving numerous assignments after normal office hours or are asked to respond to phone calls and emails at all hours of the day, evenings, and weekends, try to set boundaries with your supervising attorney or client. Enlist sponsors or other colleagues to help devise an approach that will not be viewed negatively.

Negotiate with your spouse or partner to divide child care, home schooling and other household tasks more equitably. Ask children and relatives to help out so that the entire family is working together. Avoid feeling guilty about not getting things done that are either not important or have a distant deadline. For women, try not to let gender expectations about home responsibilities overwhelm you. This will only lead to increased frustration, anger and burn-out. Simply put, this is not the time to try to maintain an unrealistic “picture perfect” household.

Maintain a separate work area. Men are often allocated the home office for their work while women are more likely to work at the kitchen or dining room table, where they are prone to be interrupted frequently by children and others in the household. In addition, try to create a daily schedule and routine. This will give a sense of control and normalcy. Understand when you are the most productive, and try to arrange your work schedule in that block of time.

3. Know When to Ask for Support

Reach out to ask for resources that you may need. Keep supervisors and clients informed about the status of work and try to ensure that deadlines are real and not artificial, which can create undue pressure and may result in an inferior work product.

4. Stay Visible with Clients, Partners, and Other Lawyers in the Firm, and in the Legal Community

Reach out to clients to see how they are doing, and ask if you can be of assistance. Inquire as to whether clients have a particular area where they might like to receive more information. Reach out to mentors and sponsors. Think of partners and other lawyers in your firm as your clients with whom to check in, ask for work, or offer to write an article or newsletter. Given that remote working provides few if any opportunities for in-person interactions, stay in communication preferably by video or phone, rather than only by email. Attending a range of activities online will help you to feel connected and will likely give you a fresh idea or perspective that you can use with clients or your colleagues. If your organization is big enough, try to orchestrate or participate in virtual social get-togethers.

5. Be Pro-Active About Your Career

The pandemic has provided a unique opportunity to re-assess your career. Have you set out your goals and identified your strengths, weaknesses, and the steps and resources you need in order to achieve your goals? Are you getting the skills and training necessary for you to advance and succeed? If not, try to figure out what you will need to do to achieve them. Now may be a good time to identify and become involved in new practice areas that are developing. More senior lawyers may want to consider taking advantage of an early retirement program and assess other lifestyle changes and opportunities.

6. Take Care of Yourself

These have been stressful and difficult times and it is important to take steps to promote your own resilience. Get exercise. Try to avoid catastrophizing, sending your thoughts spiraling into worst case scenarios. If you find yourself struggling with depression, anxiety, lack of sleep, stress, loneliness, drinking or substance abuse, do not hesitate to seek out assistance.

7. Volunteer

The pandemic has demonstrated how lawyers can be instrumental in providing *pro bono* services to the increasing number of people who are in true need. Research shows the many psychological benefits that can result from helping others. The ABA has a variety of ways in which lawyers can get involved, and your work will make a significant difference. Volunteering can also provide additional networking opportunities with lawyers who may share similar interests.

Stay visible with clients, partners, and other lawyers in the firm, and in the legal community.



VIII

Conclusion

The thousands of ABA members who responded to the Practice Forward Survey have made it clear that the pandemic has had a profound impact on each of them as well as their employers. The unprecedented transition to remote work has truly created a “new normal,” and this paradigm shift will have far-reaching consequences for the profession well after the pandemic has abated. The Survey also confirmed the continuing barriers that confront women lawyers and lawyers of color, many of which have been compounded as a result of the transition to remote work. The significant changes over the past year will provide a unique and historic opportunity for legal employers to reassess and re-evaluate themselves, and to implement meaningful changes to the practice of law moving forward. It is our fervent hope that the data-driven best practices suggested herein will be a win-win for both legal organizations and their individual lawyers.

The ABA’s Coordinating Group on Practice Forward, and the many Sections, Divisions, Commissions, Forums, and other member groups, stand ready to provide targeted resources and programs to help ABA members meet on-going challenges and opportunities into the future. With creativity, strong leadership, and laser focus, we can all lead the profession to more inclusive, diverse and flexible workplaces.



Endnotes

1. Analyses were conducted using weighted survey techniques within the R statistical computing language. Though we were initially interested in also weighting by race/ethnicity, the data did not require us to do so because 96% of our participants indicated their race/ethnicity (and the ABA has this information for about only 40% of their members). It is also the case that there were not enough respondents in certain categories to generate stable group estimates or comparisons. As examples, there were too few respondents who identified as Native American or Hawaiian/Pacific Islander to conduct separate analyses of those groups. As another example, the respondents who identified as LGBTQ+ or disabled were not large enough groups to generate statistically meaningful comparisons.

2. Every respondent did not necessarily answer every question. In addition, there were several “skip” patterns in the questionnaire so that respondents received only those questions that applied to their situation. As examples, certain questions not appropriate to solo practitioners, or respondents without dependent children living at home, were not directed to those respondents.

3. See, e.g., D. Peery, P. Brown and E. Letts, *Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color* (American Bar Association June 2020).

4. *Id.*

5. Longitudinal research by the American Bar Foundation shows that even in non-pandemic times, close to 20% of law school graduates were working in settings where they were not practicing law some 15 years after graduation. See <https://thebarexaminer.org/wp-content/uploads/PDFs/BE-Sept2015-AftertheJDIII.pdf>. See also McKinsey & Company/ *Lean In, 2020 Women in the Workplace: Corporate America is at a Critical Crossroads*. https://wiw-report.s3.amazonaws.com/Women_in_the_Workplace_2020.pdf (1 in 4 women are considering down-shifting their careers or leaving the workforce. Black women are more likely to think about leaving the workforce).

6. There were sufficient data to compare lawyers in private firms with lawyers in corporate law departments. Lawyers in other settings such as not-for-profits were asked these questions but there were not enough responses to focus on that sector for this series of analyses. These questions were not asked of solo practitioners, lawyers in academia, or judges.

7. See T. M. Melaku, *Why Women and People of Color in Law Still Hear “You Don’t Look Like a Lawyer.”* <https://hbr.org/2019/08/why-women-and-people-of-color-in-law-still-hear-you-dont-look-like-a-lawyer>.

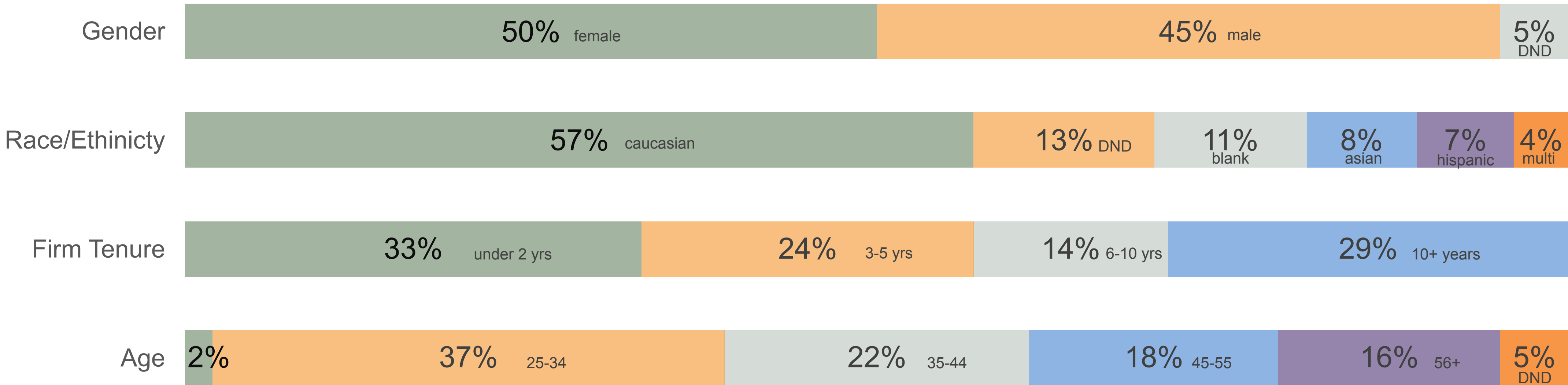
8. The result for lawyers is not extreme. See, e.g., earlier report from O.C Tanner, <https://www.octanner.com/covid-19/pulse/may-18-22.html>, showing that 28% of office-based workers generally hope to work from home 4 or 5 days a week and, at the other end of the spectrum, 33% hope to work in their offices 5 days a week.

Working Post-Pandemic



Survey Demographics

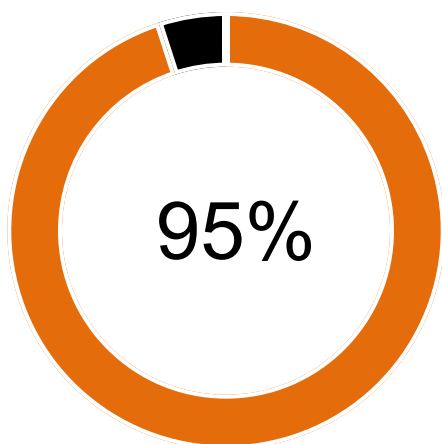
- 1,150 responses / • 83% response rate
 - 83% of Partners and Senior Counsel
 - 79% of Counsel and Associates
 - 87% of Staff Professionals



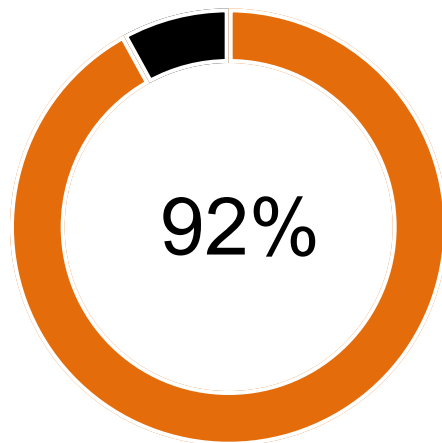
Survey results suggest that there is a preference for some form of remote work to continue post-pandemic

Majority of respondents desire remote work and believe it is effective.....

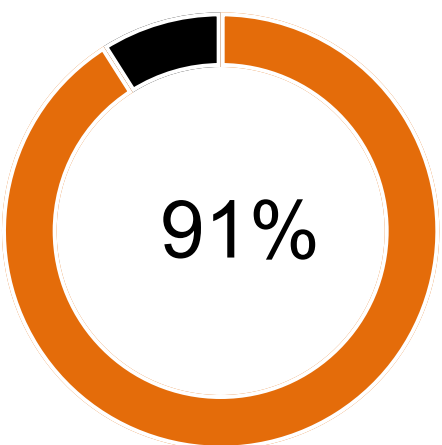
Firm Survey



Of surveyed respondents like working from home

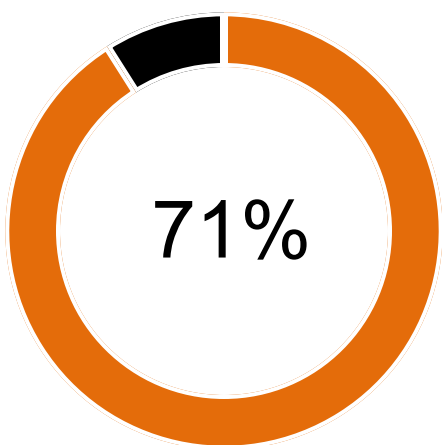
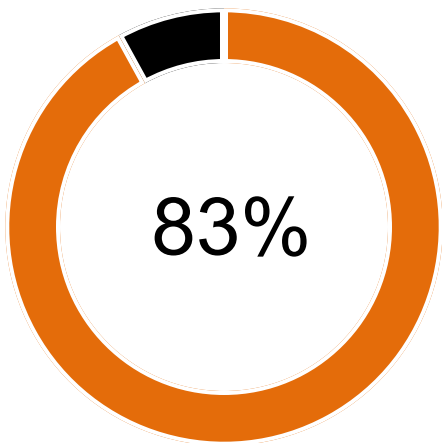
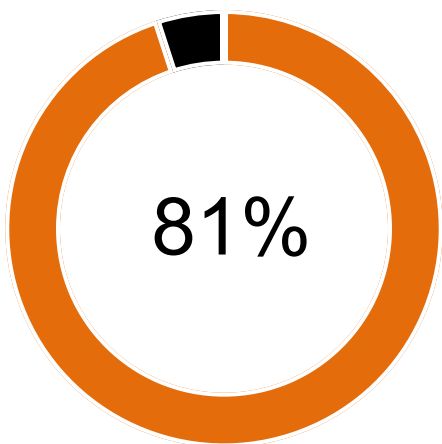


Of surveyed respondents that would like to work remotely at least 1-day a week



Of surveyed respondents said their productivity is similar or better than in the office

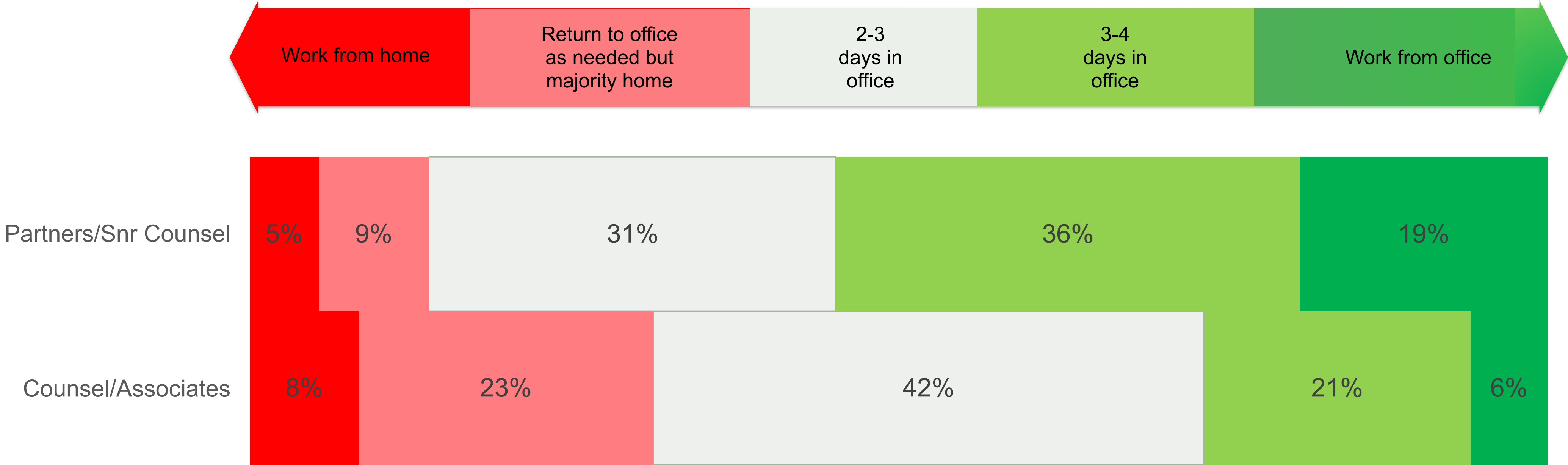
McKinsey Survey*



*source: McKinsey Consumer Survey; McKinsey COVID-19 Smart working survey; Gallup

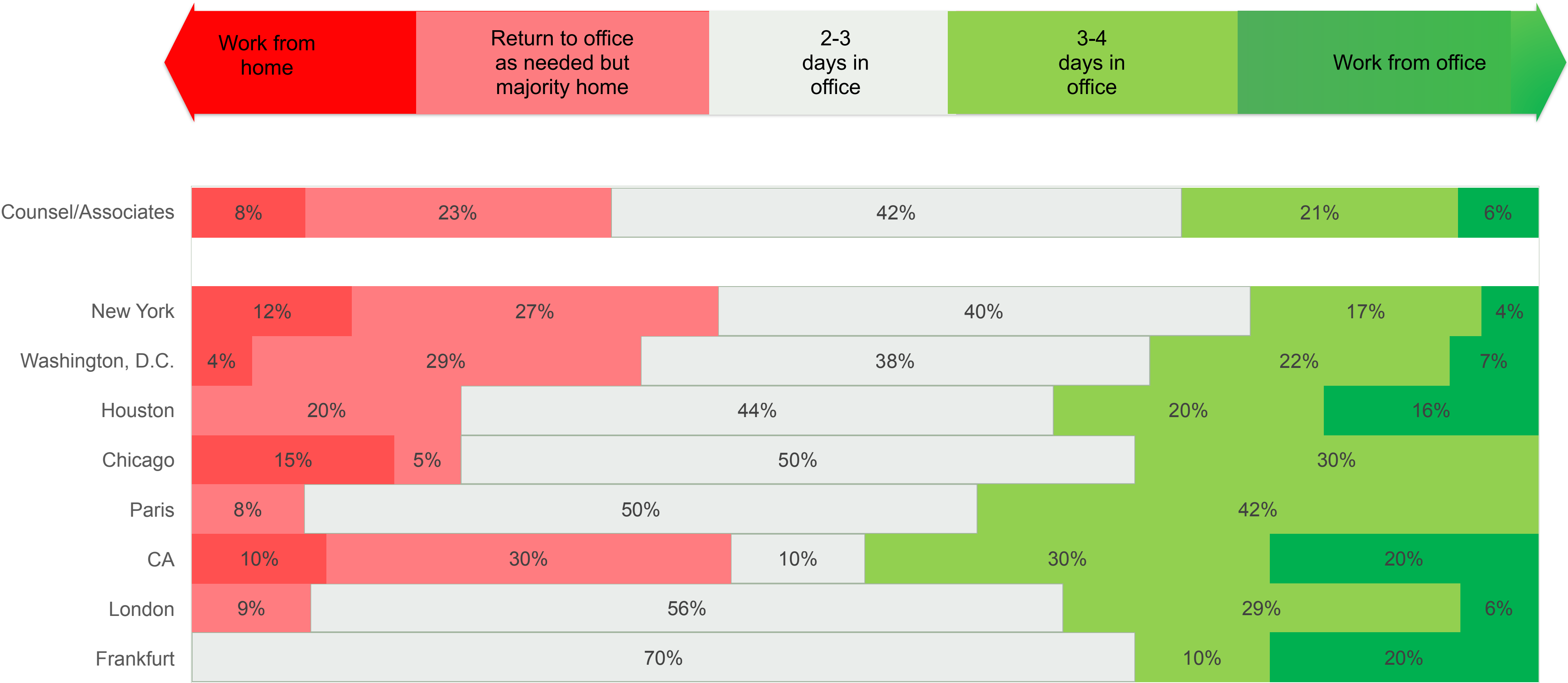
Post-pandemic work preference (by Job Title)

Once we are in a post-Covid environment, how often do you personally desire to return to the office?



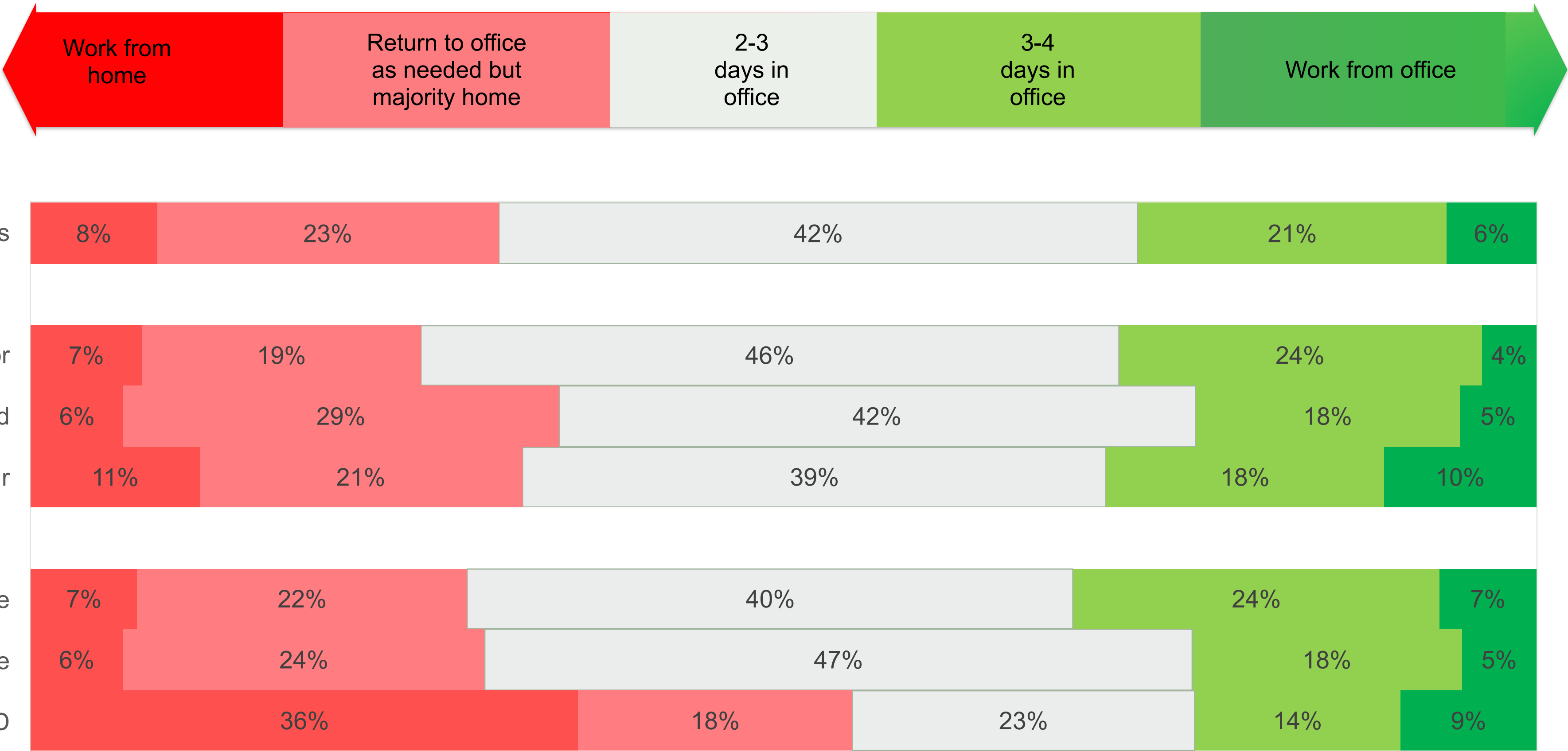
Post-pandemic work preference (Counsel/Associates By Office)

Once we are in a post-Covid environment, how often do you personally desire to return to the office?



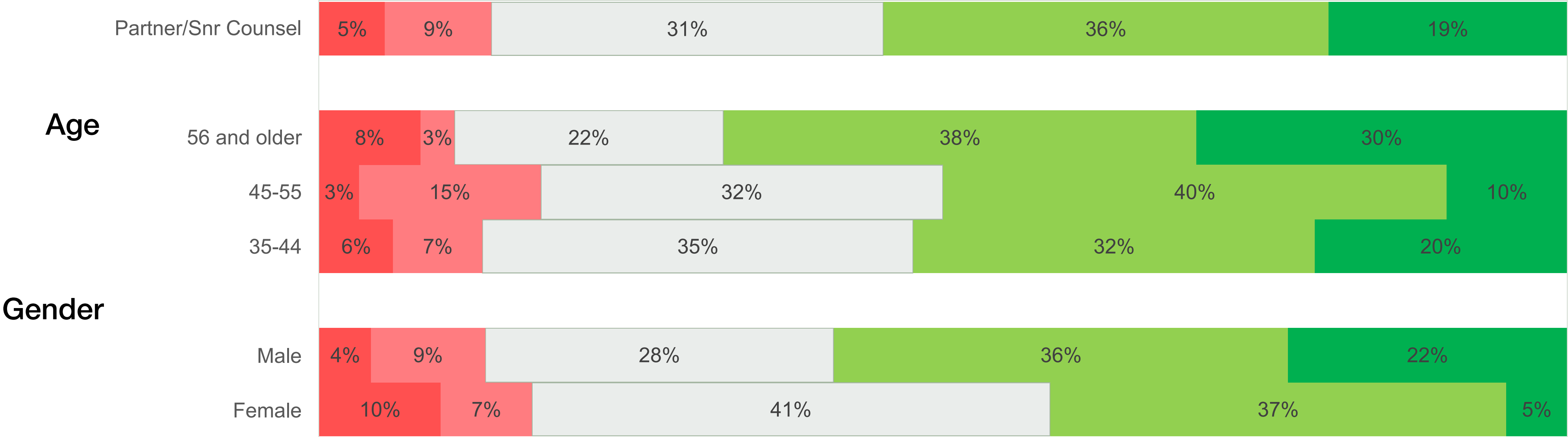
Post-pandemic work preference (Counsel/Associates By Seniority / By Gender)

Once we are in a post-Covid environment, how often do you personally desire to return to the office?



Post-pandemic work preference (Partners/Senior Counsel By Age /By Gender)

Once we are in a post-Covid environment, how often do you personally desire to return to the office?



What do attorneys miss most about being in the office?

The data confirms that we miss seeing each other

88% of respondents miss socializing with colleagues

79% of respondents miss collaborating informally with colleagues

43% of respondents miss using technology or facilities only accessible in the office

32% of respondents miss attending scheduled meetings

30% of respondents miss the ability to concentrate and do focused work

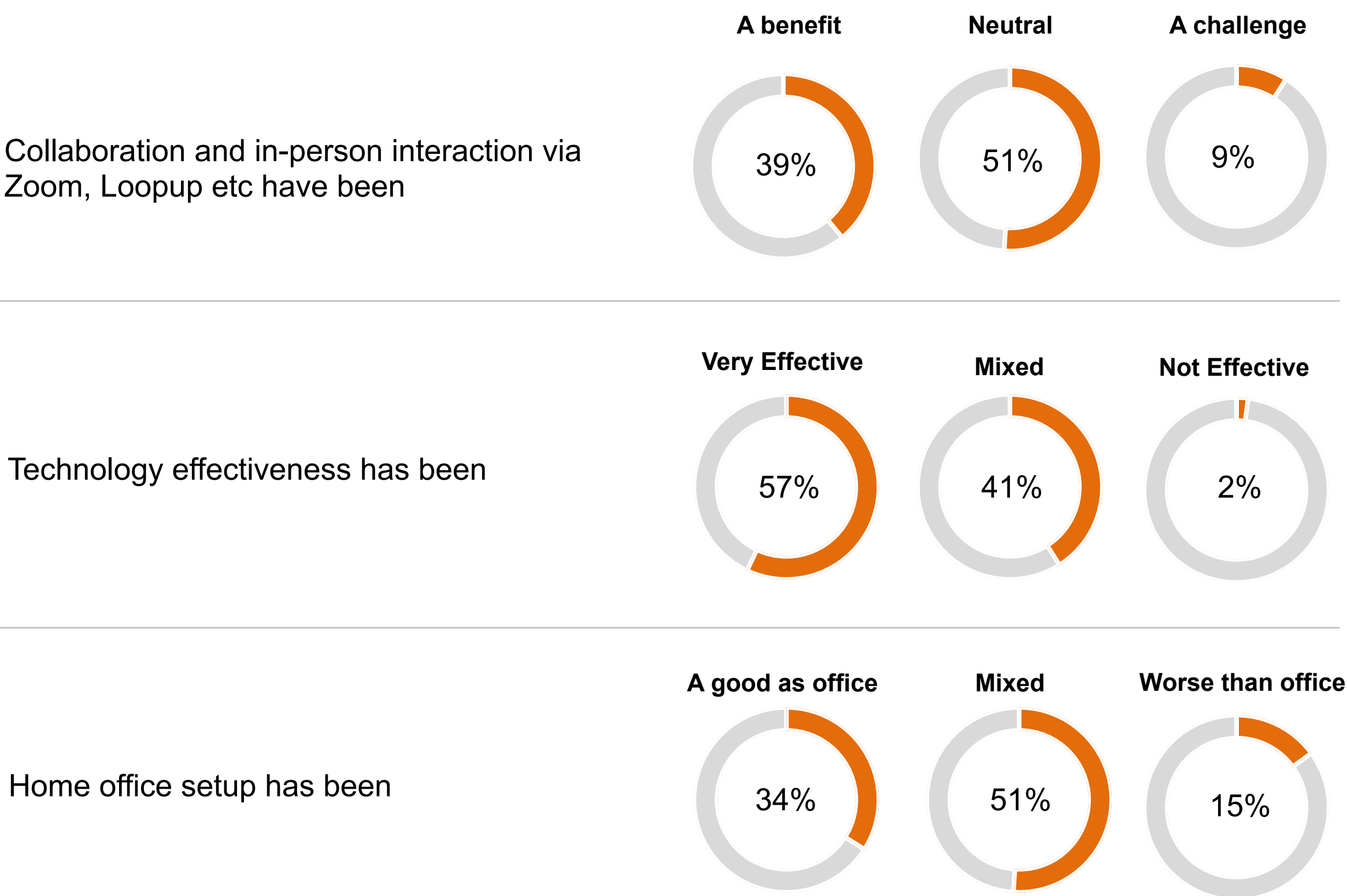
25% of respondents said the office provides the best environment to undertake work

15% of respondents miss accessing confidential materials or having confidential conversations

4% of respondents do not miss anything about being in the office

Attorney technology and home office setup

The home environment is suitable for working but there are shortcomings



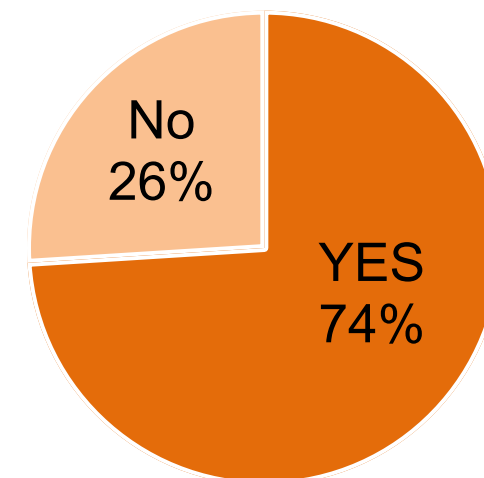
Key Themes

- Responses nearly identical from partners and associates
- Numerous respondents noted internet connectivity issues and lack of high speed printing
- Zoom fatigue – tough staring at a screen all day
- Zoom works but not a substitute for in-person meetings
- Have actually had more meetings and face time than pre-pandemic – feel more connected than ever
- Remote detrimental to the training of junior associates
- Jabber is sub-par and many issues with phones
- IT support has been fantastic

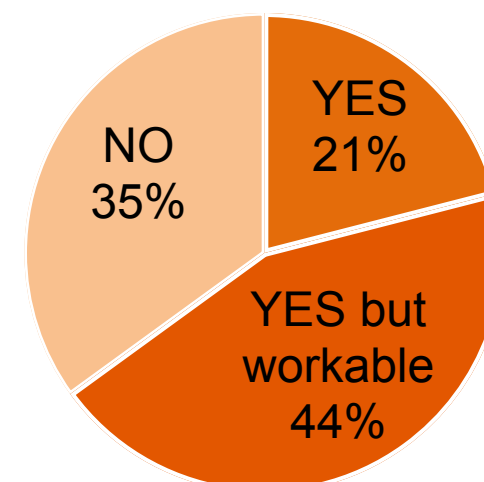
Attorney work-life experience in the remote environment

Remote work provides greater flexibility but there are drawbacks

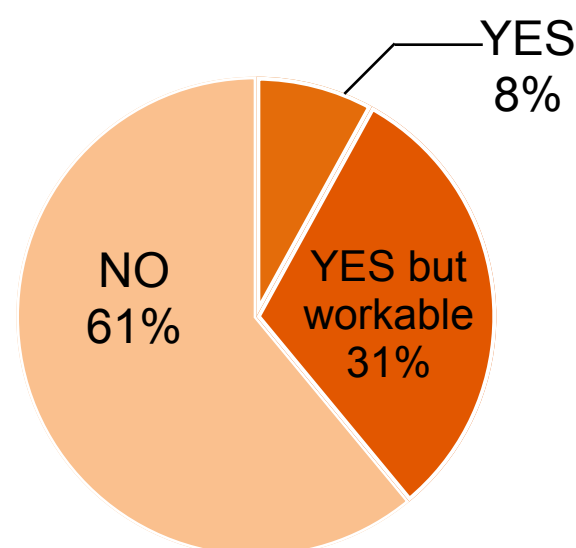
The remote environment has allowed more flexibility in when during the day attorneys do their work



Maintaining boundaries between work and home have been a challenge



Competing Demands/Household conflicts (i.e. schooling, childcare, roommates, etc.) have been a challenge



Common Themes from Attorneys

- Greater expectation to be available 24/7
- Less commuting equals more time to work
- No distinction between work and home
- Childcare has been a real challenge
- Work/life boundaries always been fluid, even pre-COVID
- Increased quality of life

Developing existing and new client relationships - Partners

46% Of partners said business development has not been effective in the remote environment

“Greatest impediment has been the inability to meet in person”

“Video pitches have gone okay, but not the same as when pitch took place in prospective client’s office”

“Not being able to invite clients to lunch/dinner/drinks, in-person CLEs and such has been a hindrance to client development”

“BD issues come from not being able to meet clients in person, not because of office arrangements”

“Everything about remote has been a positive with the very notable exception of business development”

“My existing client relationships are growing quite well and are more personal with Zoom than the phone”

Recent PWC survey key findings – It's time to reimagine where and how work will get done

- Remote work has been an overwhelming success
- The office is here to stay but its role is set to change
- There is no consensus on the optimal balance of work days at home vs the office
- Least experienced workers need the office the most
- Hybrid workplaces likely to become the norm

McKinsey Observations

Employers who reimagine where and how work is done post-pandemic and get it right will likely **'win the war for talent'** as employees seek continued flexibility

Employers who identify new roles that can be largely virtual will have access to new, potentially more **diverse pools of talent**

Firm Observations

Newly hired candidates are requesting and expecting a flexible work environment post-pandemic

Rehiring former high performing associates who left due to geographic moves

Recruiting from across the US and considering fully remote options on a case by case basis

Monitoring state bar rules

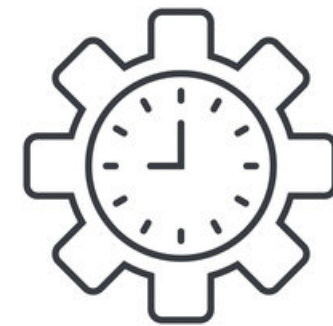
Risks if Hybrid is not implemented well



Erosion to firm culture and cohesion



Lose innovation and creative edge



Productivity and morale suffers



Create unequal playing field

Remote work creates a number of opportunities, but also some significant challenges

Individuals at all levels are anticipating that there will be a greater proportion of days worked remotely than in the past

Closing Thoughts

Survey results aid in formulating strategy but culture, client-demands and long-term strategy will drive the decision making process

Not a one size fits all solution. This is uncharted territory and we need to be nimble and anticipate some “trial & error”

Working Post-Pandemic

