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**PROGRAM MATERIALS**

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**The Intersection of Diversity  
and Well Being:  
Law Firms Efforts to Support  
Diverse Attorneys**

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Dr. Sharon Meit Abrahams is a legal talent development expert with over 25 years of experience in success coaching for attorneys and executing high impact programs for law firms. She has created and implemented firm wide initiatives that help attorneys maximize their productivity while maintaining engagement. When individuals produce, a firm increases its profitability. As a talent development leader, she has handled every aspect of an attorney's firm life from onboarding and integration, through mentoring and training to succession planning and exit interviews.

Dr. Abrahams has published three books with the American Bar Association and regularly publishes articles for Thomson Reuters and American Legal Media. Known for engaging and educational programs, Dr. Abrahams is a sought-after keynote speaker, program facilitator and law firm advisor.

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## SPEAKERS



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Marlon is the Director of Talent & Diversity at Neal, Gerber & Eisenberg LLP. In that role, he helps lead and advance the ongoing development and implementation of the firm's recruiting, professional development and diversity strategies. As a former litigator, Marlon brings strategic and innovative thinking to the areas of recruitment, professional development and diversity & inclusion.

Prior to joining Neal, Gerber & Eisenberg, he was the Director of Inclusion & Professional Development at Husch Blackwell LLP. Marlon previously practiced as a litigation attorney at Winston & Strawn LLP in Chicago and at Davis Polk & Wardwell LLP in New York. He is an active member of the National Association for Law Placement, the Association of Law Firm Diversity Professionals, and the Professional Development Consortium. He previously served as the Vice Chair of the Diversity & Inclusion Committee of the ABA's Law Practice Division and was appointed to the Law Practice Division's Attorney Well-Being Committee.

Marlon holds a J.D. from the New York University School of Law, where he was Notes Development Editor for the New York University Law Review. He received his B.A. in Political Science from Yale University.

# The Intersection of Diversity and Well Being: Law Firms Efforts to Support Diverse Attorneys

7/27/2021

Presenters:

Dr. Sharon Meit Abrahams, Legal Talent Advisors, LLC  
Marlon Lutfiyya, Neal, Gerber & Eisenberg LLP

- I. Challenges that everyone has faced during the pandemic
  - a. Uncertainty and disruption; coping with the loss of normalcy
  - b. Burnout and loss of motivation
  - c. Pandemic fatigue
  - d. Stress related to job security, potential salary reductions, furloughs, etc.
  - e. Loss of interpersonal (physical) connections; remoteness from close family and friends
  - f. Managing both work and family/private commitments (especially e-learning)
  - g. Cabin fever
  - h. Loss of organic exchanges at work and, accordingly, the loss of ad hoc/shadowing development opportunities
- II. Factors Impacting Attorneys from Underrepresented Groups Especially
  - a. Disproportionate effect of COVID-19 on Black and Latino Americans
  - b. Anti-Asian and other race-based violence
  - c. Vicarious racial trauma related to race-based violence, police brutality and remote racism and discrimination
  - d. The feeling among some that anti-racism and efforts to address system racism are themselves being branded unfairly as racist
  - e. Impact of the virtual environment on biases; social isolation and disconnectedness; loss of the kinds of in-person interactions that help attorneys from underrepresented groups bridge differences
  - f. Childcare falling disproportionately to women during the pandemic
- III. More than ever, law firms are committed to the holistic well-being of attorneys

- a. More focus on mental health, substance abuse and impairment
  - b. ABA Well-Being Pledge
  - c. Implementation of well-being curricula; dedication of staff/roles to well-being efforts
  - d. Increased willingness to understand and address challenges unique to their populations from underrepresented groups, even “outside” the work setting
    - i. Formal statements from organizational leadership about current events (i.e., murder of George Floyd and others)
      - 1. Expansion of areas of discussion/education that are “work appropriate”
    - ii. Training/programming related to biases and systemic racism
    - iii. Creation, elevation and expansion of DEI roles and teams
  - e. Increased willingness to understand and appreciate their populations from underrepresented groups (the promotion of understanding/awareness and social connectedness)
    - i. Communications and educational programming about different populations (i.e., heritage month communications, Ramadan, etc.)
- IV. Hallmarks of efforts that effectively address the well-being of attorneys from underrepresented groups
- a. Engagement of broad swath of the firm/organization as opposed to just the D&I Committee or handful of leaders
    - i. A “we” problem as opposed to a “you” problem
  - b. Tied to the firm’s core values/strategic vision
  - c. Very clearly a priority of top leaders/leadership
  - d. A regular part of firm operations/programming, as opposed to ad hoc efforts
  - e. They go beyond “blanket” efforts and seek produce touchpoints with individuals
  - f. They encourage individuals from underrepresented groups to seek out help and additional resources
- V. Three Initiatives that firms can implement

- a. Preliminary notes:
  - i. Attorney/staff populations can distinguish empty statements by leaders from real commitment
  - ii. The initiatives below are just a few of many
- b. Programming (helps underrepresented populations by acknowledging challenges)
  - i. Educational programming that addresses the intersection between DEI and mental health (the programs below are delivered by licensed professionals)
    - 1. “Coping With the Loss of Normalcy During COVID” (with discussion about vicarious racial trauma) (Dr. Caroline Adelman)
    - 2. “Growing Through It: Pandemic Fatigue, Resilience, Growth and the Road Ahead” (Dr. Caroline Adelman) (with discussion/resources related to anti-Asian violence)
    - 3. Overcoming Imposter Syndrome and Cultivating Evidence-Based Confidence (Neha Sampat)
    - 4. Burnout (Dr. Komal Bhasin)
  - ii. Programming that encourages action among everyone
    - 1. “Navigating Difficult Conversations About Race, Diversity and Inequity” (anti-racism workshop - framework for understanding bias, prejudice and oppression, how these concepts play out in workplace settings, and how to address situations whether you’re the offender, bystander or a victim)
    - 2. Bystander Intervention Training (to address anti-Asian violence outside the workplace)
  - iii. Programming focused on dialogue and interaction
    - 1. Roundtable discussions related to systemic racism and current events—for all attorneys and staff (not mandatory, but encouraged)
- c. Systems of Check-Ins (the systems do not have to be focused exclusively on “well-being”) (helps underrepresented populations by targeting individuals and providing opportunities for two-way feedback)

- i. Sponsorship Initiative
  - ii. Assignment Review Partner System (oversight of associate work allocation)
- d. "Gatherings" that build connectivity/collegiality across the virtual divide
  - i. Associate Pods (small groups)
  - ii. Monthly town hall meetings (a forum for diversity-related messages)
  - iii. Affinity group meetings
  - iv. Mothers' Luncheons
- e. Conclusion



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## Addressing Biases in Large Law Firms

BY MARLON LUTFIYYA ON JULY 14, 2017

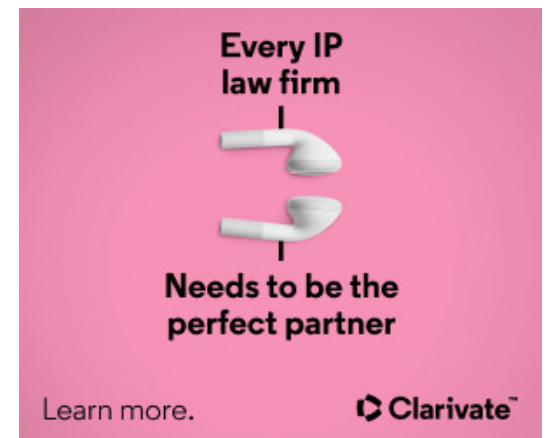


The “vanishing ball illusion” is a simple magic trick. After producing a small ball, the magician tosses and catches it two or three times. On the final toss, the magician’s hand starts upward, her fingers unfurl, and *voilà!*—the ball vanishes. To most observers it disappears mid-flight, a confounding experience because the ball was in plain view.

In reality, the magician palms the ball and only pretends to toss it. It never leaves her hand. But the key to the illusion is the magician’s use of subtle gestures that help her deliberately and deftly manipulate cognitive weaknesses in awareness and attention. Each time the magician tosses the ball, she tracks its movement with her head and eyes. When she merely pretends to throw it, her head and eyes follow an imaginary path and covertly direct the attention of the audience to the anticipated spot of the ball. Neuroscientists who have [studied observers as they watch the trick](#) have found that the *focus* of observers is on the predicted position of the ball even as their *gaze* is elsewhere—not on the spot where they claim the ball vanishes. In other words, the magician fools the brain, not the eyes, and expectations sabotage perception.

In the workplace, we make countless split-second judgments about colleagues based on limited information. Much of the processing occurs unconsciously, through what psychologists call “[social categorization](#).” We can’t possibly process the multitude of details that every new encounter presents, so we sort people into buckets (by race, gender, age, title, income, etc.) and ascribe similar characteristics to people grouped in the same bucket. This frees up limited cognitive resources.

But because we’re unaware that the process is occurring, our perceptions about colleagues feel informed, and our conclusions well-reasoned. Unbeknownst to us, though, they often flow from unconscious biases and social cues—about who is successful, how success is achieved, and the markers of success and failure—that subtly divert our focus from pertinent facts (or the lack thereof) and steer us into assumptions and conclusions that reflect the biases. It happens smoothly and inconspicuously, the way a magician leads her audience into an illusion. In [one study](#), researchers found that seven seconds before participants consciously chose one of two options they were given, the researchers could accurately predict the participants’ decisions based on their brain activity. In the [oft-cited study](#) by Nextions, law firm partners graded a legal memo much more favorably if they believed that the author was white than if they believed he was black.



THIS ISSUE OF LP TODAY

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Large law firms have struggled to address the effects of biases on their efforts to retain and advance women, minorities and others. Many firms offer bias training. Of course, the magnitude and scope of the problem are much larger than anything that training alone can tackle. Biases are powerful, pervasive and slippery in nature. And they can run unchecked in a law firm environment where autonomy is preserved, people sort into alliances based on gut feel, and attorneys feel unconnected to the firm's diversity goals.

It may be, as some have argued, that firms will see progress only after implementing systems and structures that limit subjectivity in the distribution of work assignments and development opportunities. It's unlikely that firms will be able to scheme around biases completely, however. The impact of biases may bloat in performance assessments and other subjective determinations, like a balloon that's been squeezed on one end only to swell at the other.

The way forward might involve much more programming and internal dialogue about inclusion; not the kind that tries to change "individual hearts and minds" in the abstract, but that helps to establish a culture of shared responsibility for the fate of individual attorneys. Until that kind of culture permeates a firm's operations, it's hard to see how a firm can address the effects of biases on members of underrepresented groups.

The primacy of autonomy in many firms makes it difficult for firm leaders and administrators to influence behaviors that give biases effect. In places where business development is king, revenue generators can have enormous latitude in how to staff teams, dole out work or evaluate performance. These attorneys and others can have all sorts of reasons for opting out of a firmwide diversity agenda. Some will see positive change as an inevitability that time alone will produce. For others, the work environment is an arena where everyone gets what they can get and efforts to inject some measure of "fairness" into operations, even if business-motivated, are misguided.

Even the most fervent diversity advocates may shy away from activities that, from their perspective, require them to leverage too much social capital. They may also rest on good intentions, unaware that biases (1) often conflict with the conscious opinions we hold of ourselves and (2) are not uncovered through introspection. Like everyone else, advocates are susceptible to the fundamental attribution error: the tendency to attribute someone's behavior to character traits, and to underestimate the effect of external or situational factors on behavior. That tendency can lead to an under-appreciation for the frequency that

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inclusion-related problems—the negative effects that perceived biases have on people—morph into performance problems.

The attrition model under which many firms operate adds another layer of challenges. Autonomous attorneys leading matters can simply move on from associates perceived to be substandard (based on flash assessments) or avoid working with them altogether. The ranks will refresh. Minority attorneys may disproportionately suffer from that scenario. They continue to leave firms at higher rates than white male attorneys, and their overall promotion rates have been stagnant. For example, according to the [Minority Corporate Counsel Association \(MCCA\)](#), minority attorneys were 16% of law firm lawyers in 2015, but 21% of the attorneys who left their firms that year. The [National Association for Law Placement \(NALP\)](#) has found that, between 1993 and 2016, the percentage of minority partners within large firms increased only 0.21%, from 2.55% to 2.76%.

Traditional law firm diversity initiatives have been unsuccessful because most tread around the above challenges. The initiatives often relate to: increasing the diversity of recruiting classes (which is a necessary goal but doesn't address that the real selection of candidates frequently occurs after people are hired); building camaraderie among members of underrepresented groups (affinity groups, networking events, retreats, etc.); and the provision of career management advice, through mentoring and coaching programs, and related training. These kinds of initiatives are valuable but insufficient. And they can have unintended features: an undercurrent that firms have simply missed the mark on decades of hires; a focus on adjusting members of underrepresented groups to an admittedly flawed system; and a reluctance by firms to engage their broader populations in diversity efforts, perhaps because of the perceived futility of doing so.

For firms to improve their diversity demographics, short of wholesale changes to the attrition model, more members of underrepresented groups will need fuller participation in their firms' apprenticeship systems. And they will need it early on in their careers, so they can keep pace in the promotion contests that determine the "keepers." Initiatives aimed at providing these attorneys with early, consistent access to stretch assignments and growth opportunities are a good start. These include work assignment systems for associates and shadowing initiatives.

But the apprenticeship tradition involved more than just the transmission of technical skills early in one's career. Experienced lawyers took responsibility for the careers of their charges. They invested in them

through years-long supervision and correction. They also provided the kind of cover that allowed junior attorneys to take calculated risks, to operate at the fringes of their abilities.

Unconscious biases are so impactful because they affect the informal selection of apprentices within firms, where not everyone will be a long-term apprentice. Biases around stereotypes play a part. So does [affinity bias](#), or the tendency of people to prefer the company of others who share their interests and background. At stake is the responsibility that senior attorneys will take for certain careers, not just the work the attorneys have to offer.

Real progress will occur when firms can cultivate responsibility for the fate of individual attorneys. After all, firms can retain and advance only those who walk through their doors. There isn't one prescription for progress. But effective approaches will likely have at least four characteristics.

The first is team-based accountability for the development and utilization of individuals. Law firms have implemented client service teams, despite the effects on autonomy, because they recognize that a team approach to client service is more effective and ultimately beneficial than multiple individual efforts. That reasoning may apply to the development of diverse talent. Team-based accountability for development ensures that people at the firm take responsibility for an individual's progress. Yet it sidesteps a one-to-one assignment system that may be practically unworkable in many firms given their pyramid structure. Too much diffusion of responsibility can be problematic. It could lead to [bystander apathy](#): no one takes responsibility for tasks because everyone assumes someone else will do it.

The second is a set of defined expectations for the conduct of individuals who will serve on the above-referenced teams. The expectations would vary based on the touchpoints that individual attorneys and administrators have with junior talent. They would specify inclusive behaviors and would be part of performance criteria. Setting clear expectations would do two things. It would help all involved focus on positive action as opposed to the mere avoidance of conduct that appears biased. It would also help firms establish behavioral norms. Part of that effort will include the development of productive ways to call out conduct that deviates from expectations.

The third is a strong commitment to regular programming and dialogue about biases. In many firms, attorneys and staff responsible for diversity initiatives have spent countless hours trying to understand the operation of biases. Other attorneys and staff have spent much less time on it. The disparity can hamper

diversity-related communications between the groups, as can perceptions that the priorities of the groups differ. Regular programming can help bridge the gap. Consistent, structured dialogue among individuals responsible for the evaluation and development of junior attorneys will also help; these individuals will be better able to tackle their responsibilities with an eye toward the unique challenges that members of underrepresented groups face.

Training and pointed dialogue aren't cure-alls, though. When "skilled skeptics" find evidence about something disagreeable, they may apply their reasoning skills selectively and be slower than unskilled reasoners to change their minds. And [some studies have suggested](#) that anti-prejudice messages not carefully crafted could backfire. But on balance, bias-related discussions are beneficial. Depending on purpose and content, they can serve several useful functions: to communicate that inclusion is an organizational value and a priority; to help establish ownership among all attorneys and staff for diversity initiatives, and to solicit their input; to articulate the business reasons behind effective inclusion; to reframe inclusion as a skill and not an intention; and to foster the identification and implementation of structural changes that will help limit biases.

The fourth is a willingness to invest considerable time and resources into efforts that may not produce immediate results. This admittedly describes the status quo. A focus on diversity and inclusion is in some ways a long-term play, however, even if a quick improvement in demographics may bring firms more business in the short term. It is a quest for the best talent, for better client service and for better organizational decisions. As firms grapple with the slow pace of inclusion, they may be tempted to dismiss potential efforts that don't open the floodgates. Sometimes, though, progress develops in the margins.

People who've seen the vanishing ball illusion understand that their perceptions and expectations have betrayed them, because the ball cannot have simply disappeared. We get no such clues in the workplace, where our biases and expectations around stereotypes can work to devastating effect on the potential of our organizations. Large law firms must continue to address biases head-on, through dialogue that fosters related awareness and communication as well as through systems that interrupt biases. The difficulties in tackling the problem are perhaps more indicative of the size of the task than its futility.

## About the Author

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

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



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# 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  
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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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Principals, The Red Bee Group LLC

**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.



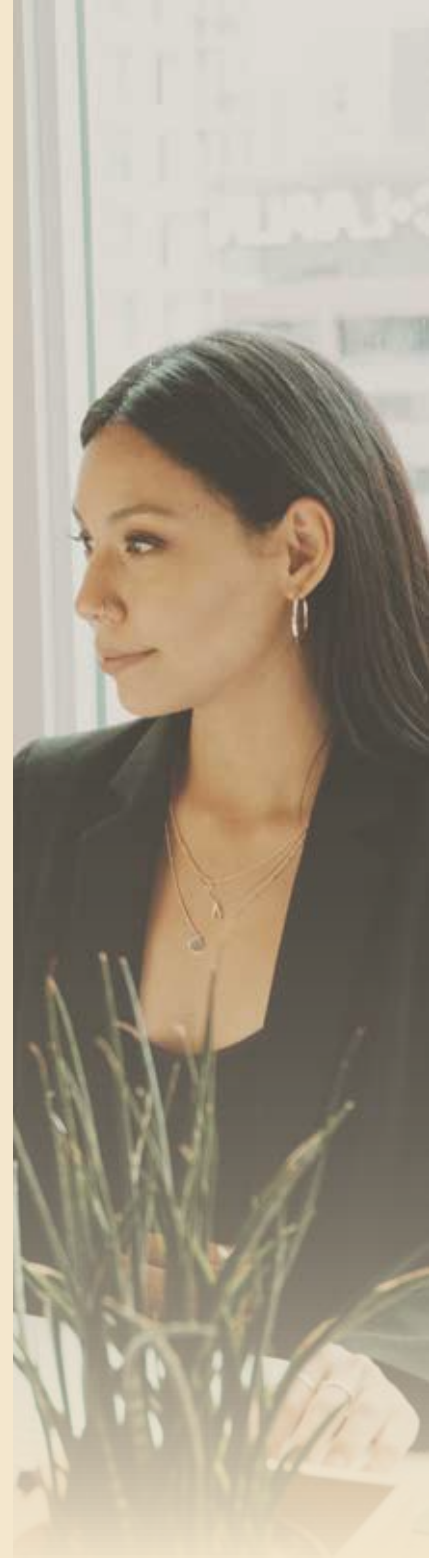
Stephanie A. Scharf and Roberta D. Liebenberg

with Natalie M. Gallagher and Destiny Peery



I

# The Purpose of the Survey and Data-Based Best Practices



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

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**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.

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

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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

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

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**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.<sup>1</sup> 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.<sup>2</sup> 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.



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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.

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## *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.

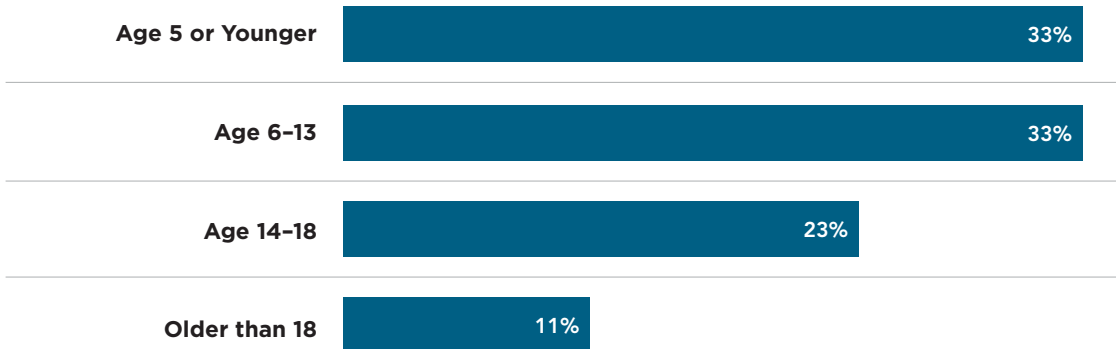
Perhaps not surprisingly, among those lawyers who reported that COVID-19 affected their employment status, junior lawyers were more likely to report this effect. Among those negatively affected lawyers who had been members of the bar 10 years or less, 50% answered “yes,” that COVID had affected their 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.

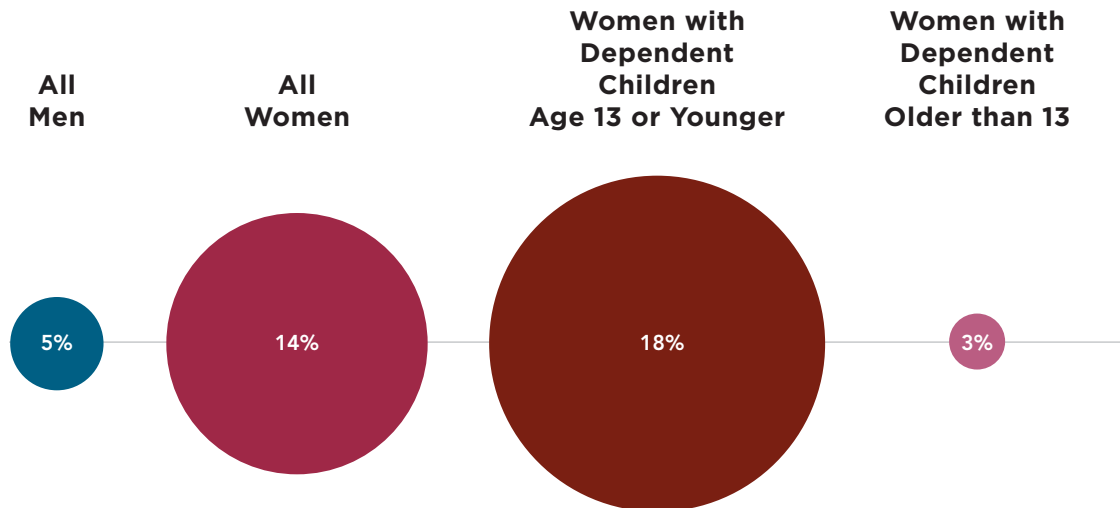
## AGE OF YOUNGEST DEPENDENT CHILD IN HOUSEHOLD



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

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

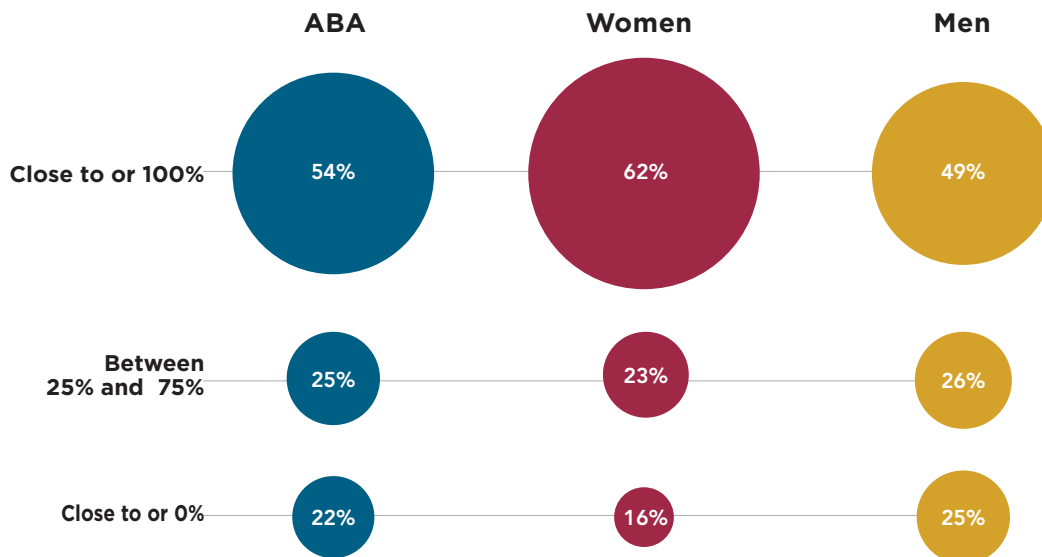
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The **COVID-19 pandemic** has had a significant effect on virtually all segments of the legal profession, regardless of age, gender, race/ethnicity, level of seniority or practice setting. This is not to say that all lawyers experienced the pandemic 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.



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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.

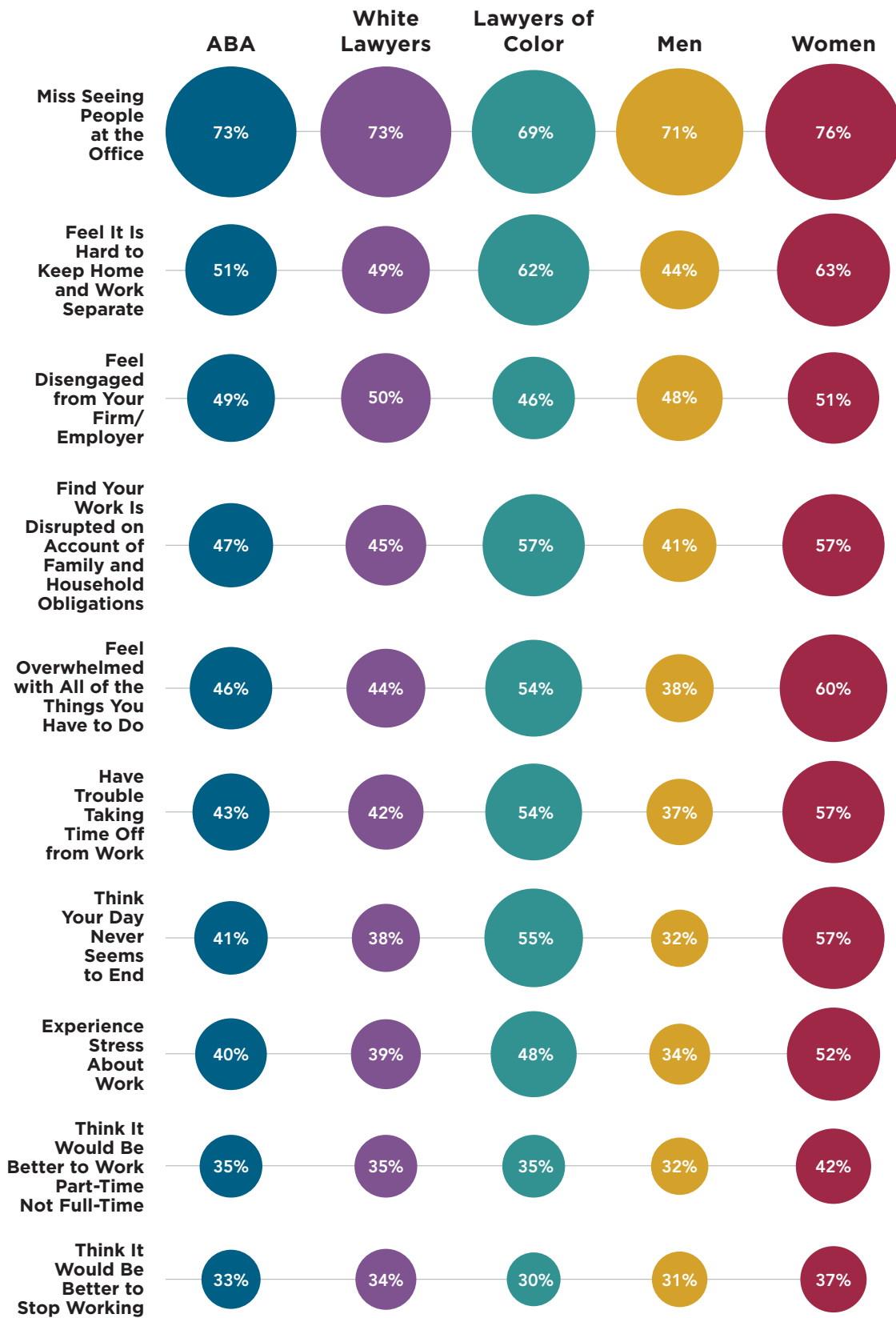
More specifically, we asked how often, compared to a year ago, lawyers experience these feelings:

- ▶ 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,<sup>3</sup> the comparatively greater economic flexibility enjoyed by many White lawyers,<sup>4</sup> and the older age of White lawyers.

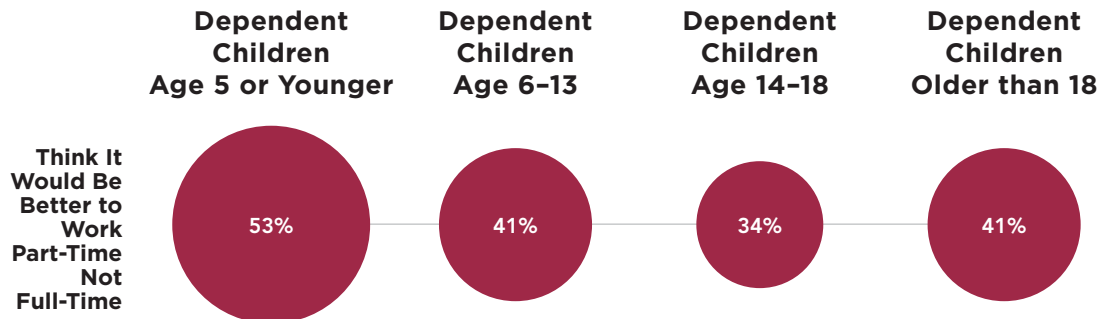
We also found significant gender differences in levels of stress and disengagement around work. Women experienced greater disruption in work than men. Thus, women were more likely to report increased frequency of work disrupted by family and household obligations, feel it is hard to keep work and home 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.<sup>5</sup>

## 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%).

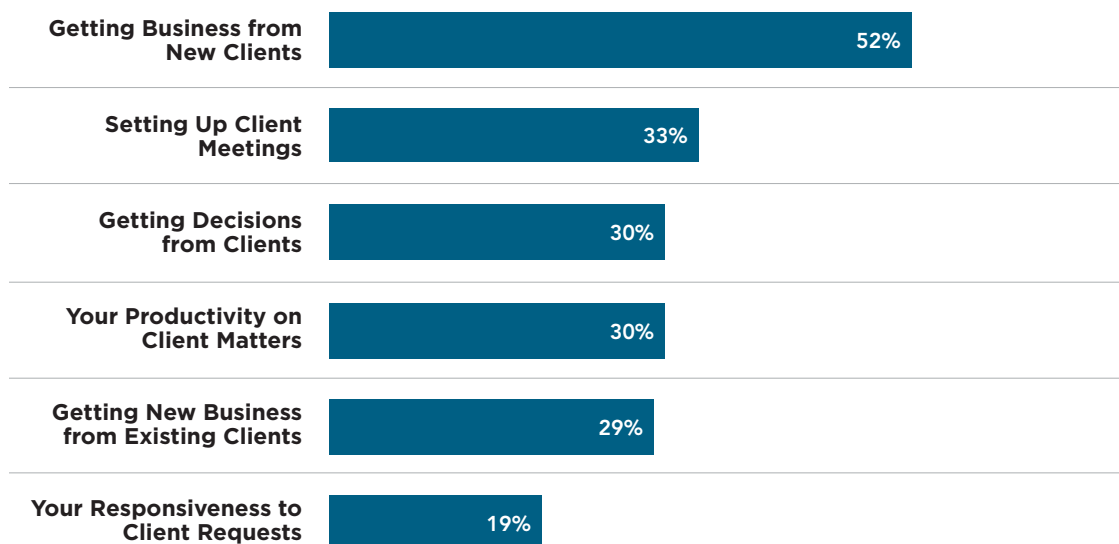
*Second*, some groups of lawyers had even higher levels of concern. Specifically:

- ▶ 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.



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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.

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

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## IV

# What's Been Happening to Diversity Initiatives?

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*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.*

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## 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.<sup>6</sup> 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.

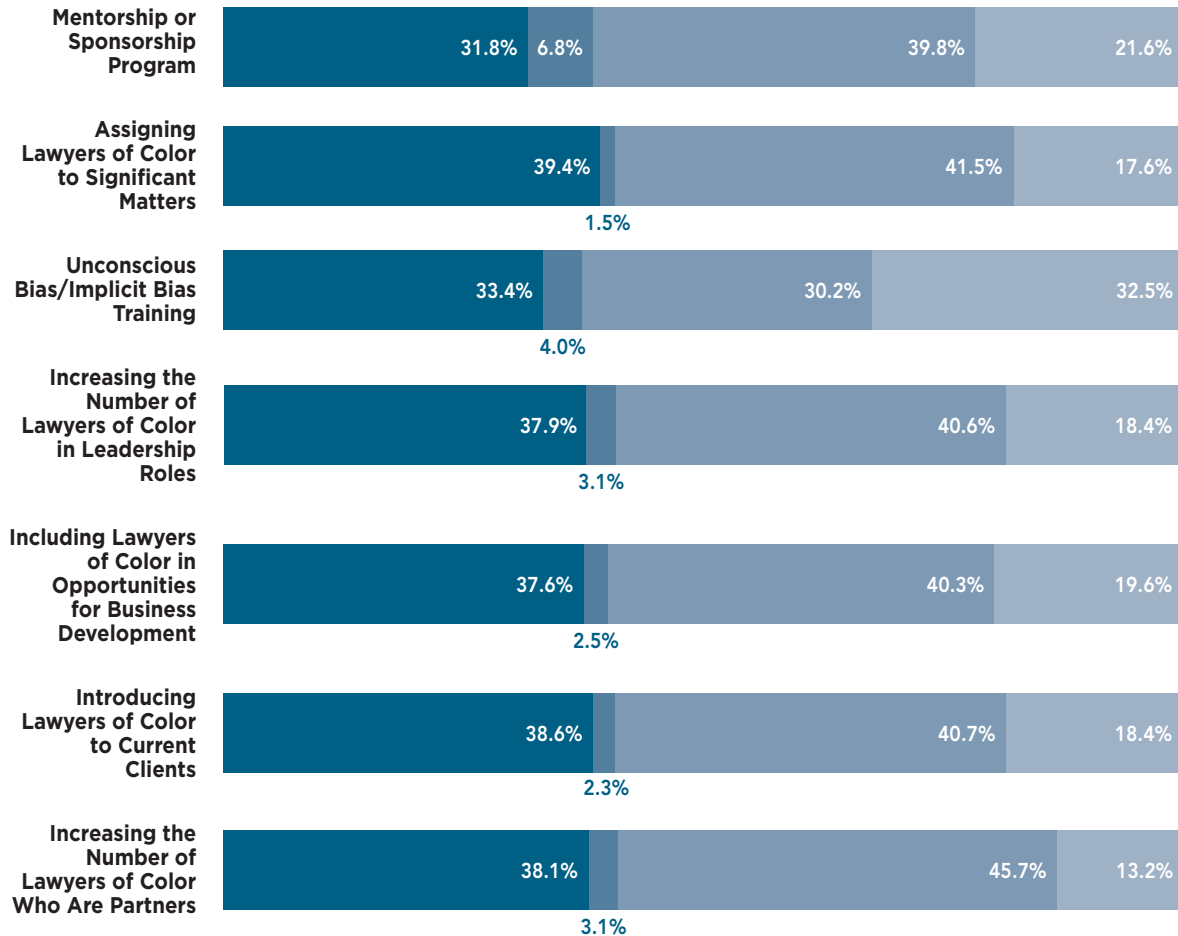
*First*, we found that these policies exist in many different private law firms and corporate law departments. It would be unusual for a mid-sized to large firm, or corporate law department, not to have at least some of these strategies for retaining and advancing lawyers of color. If we exclude solo 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.)

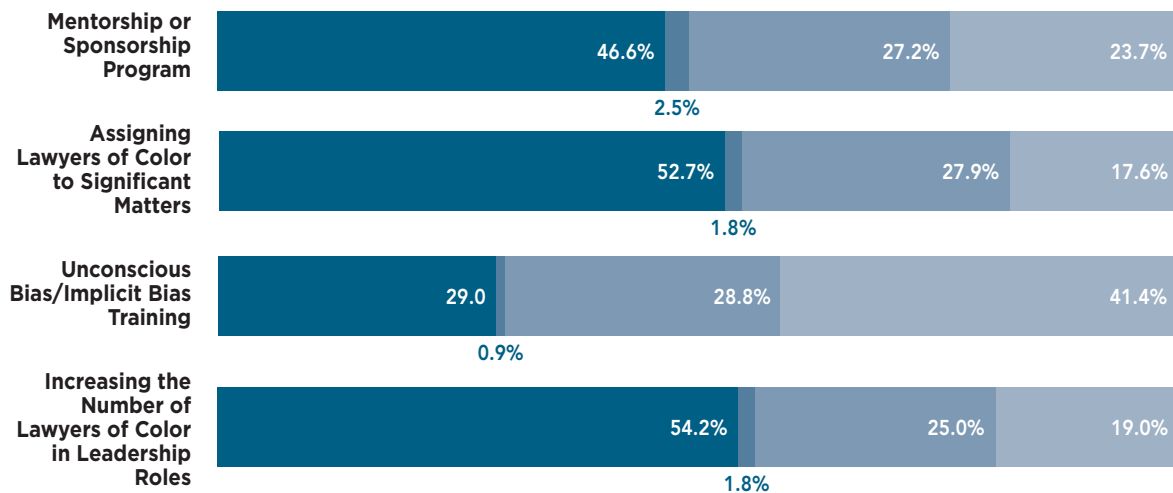
## EXISTENCE OF STRATEGIES AROUND RACE AND ETHNICITY

No Such Strategy
  Largely Put on Hold
  Stayed the Same
  Increased

### Private Practice



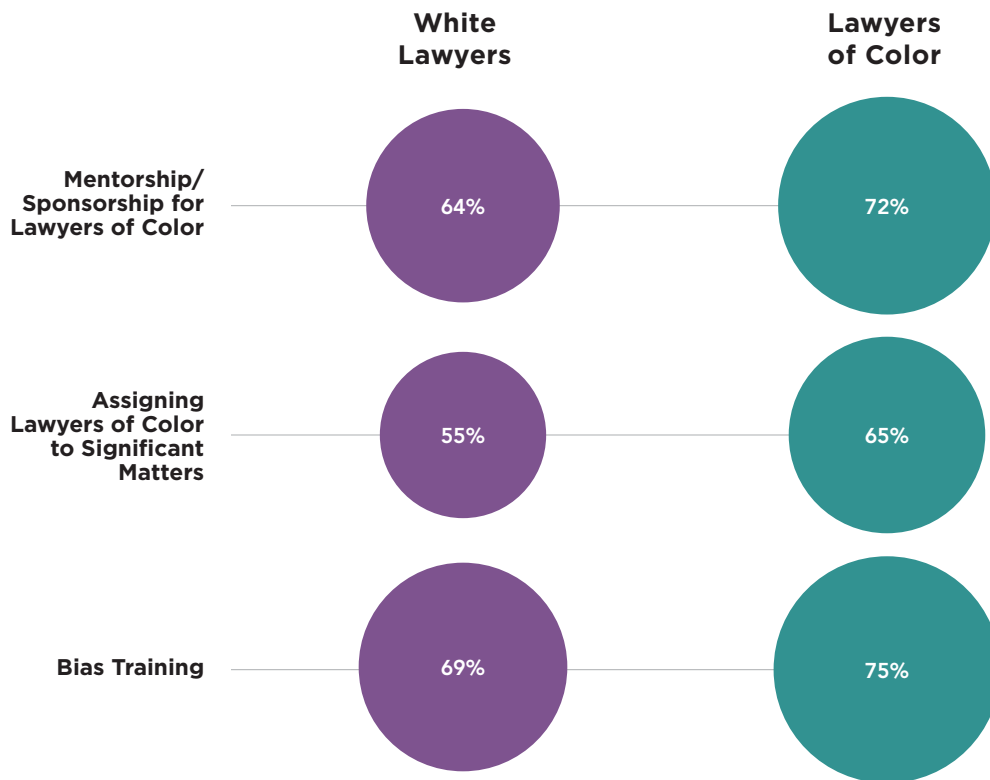
### Corporate





*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.

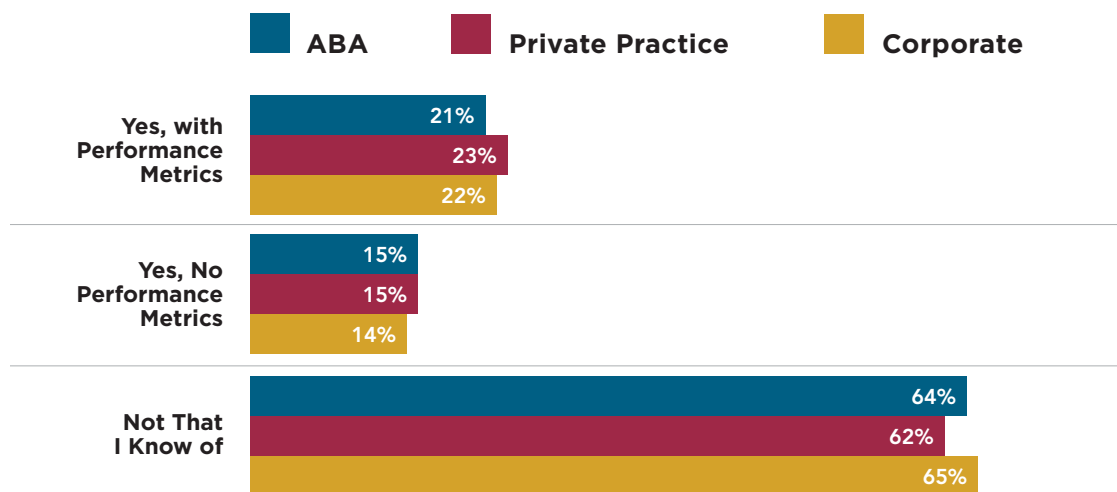
For those lawyers who perceived a change in these strategies over the past year, White lawyers were significantly more likely to report that these strategies had increased during the past year. That result was true for all seven strategies, suggesting that over the past year, White lawyers have become 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**

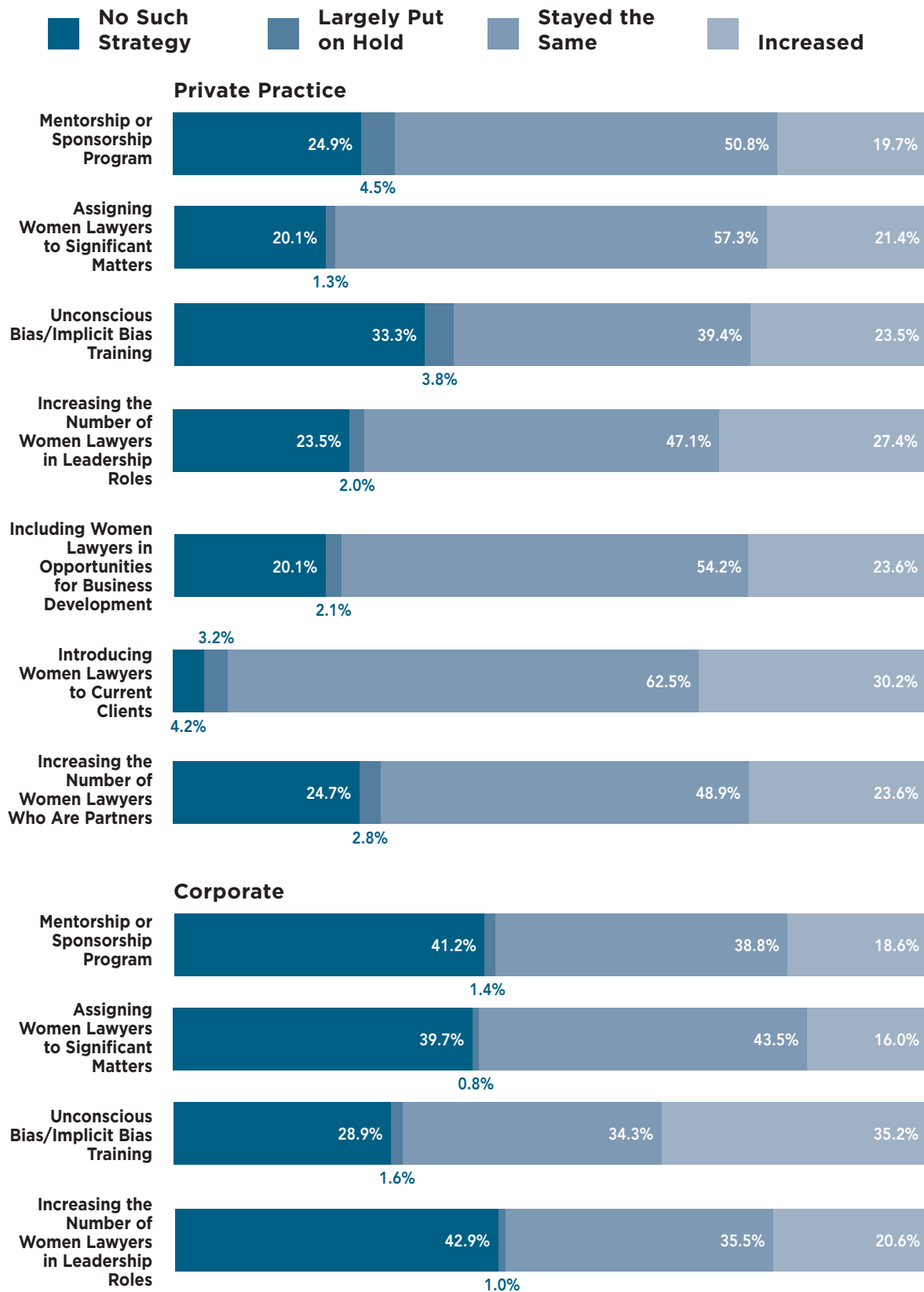
Just as there have been more DEI efforts focused on lawyers of color, women lawyers have also been actively pushing for greater advancement in all practice settings, especially in law firms and corporate law departments. While there has been some progress over the several decades that increasing numbers 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

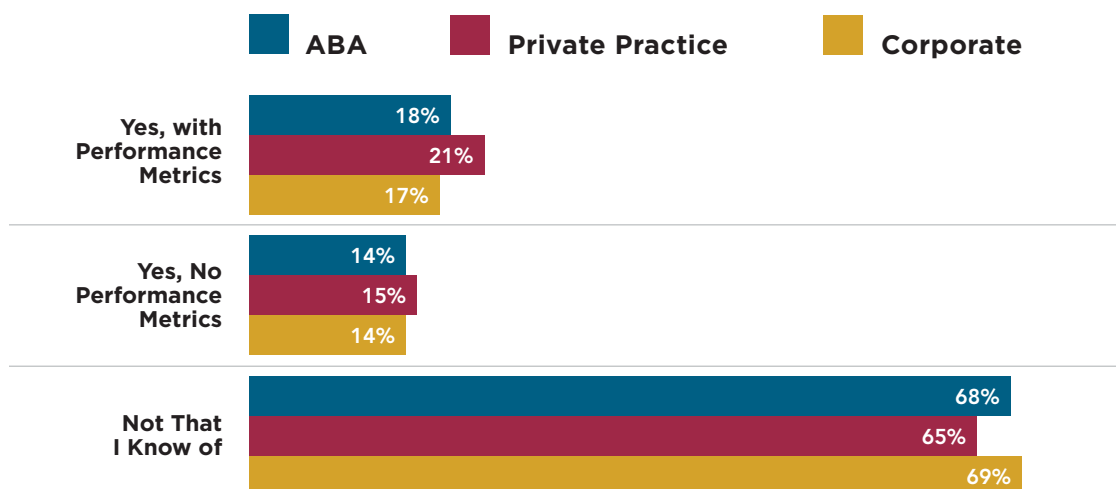
In response to questions about the use of a gender accountability tool, roughly two-thirds of members (68%) stated that they did not know of the use of such tools when assessing the results of diversity and inclusion strategies for women lawyers. That result was substantially the same for lawyers in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



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

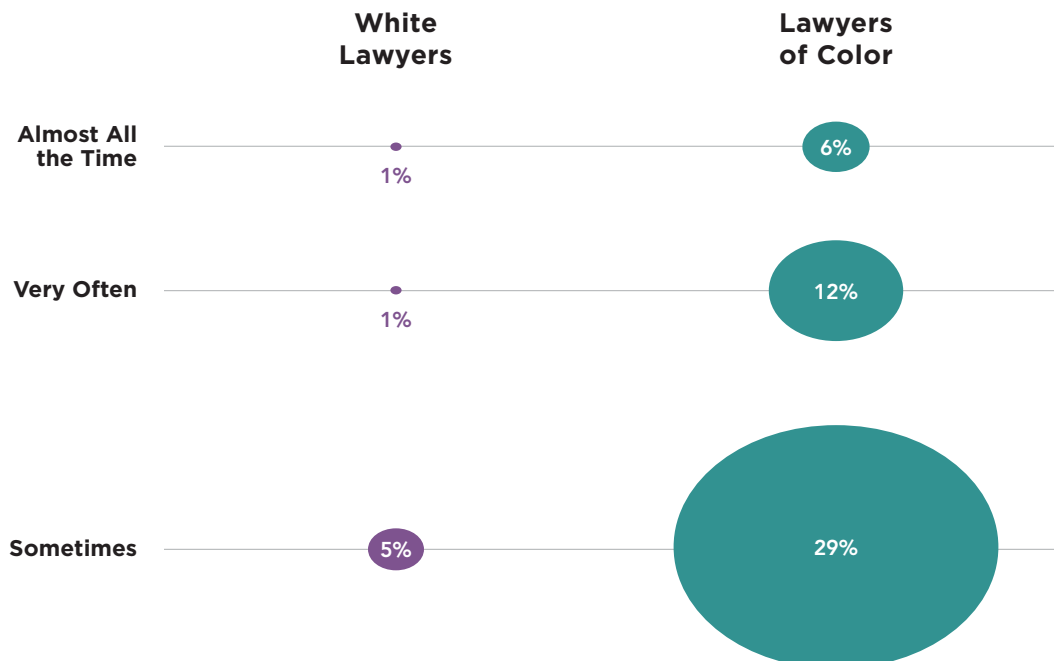
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## 1. Stress at Work Because of Race and Ethnicity

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.

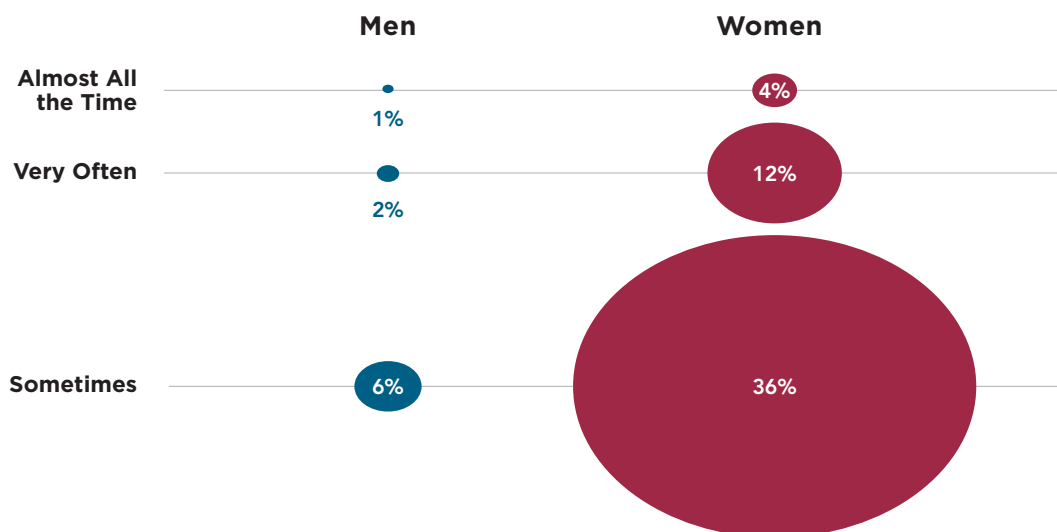
A similar phenomenon exists around “being heard” in work meetings. 43% of White lawyers report feeling heard “almost all the time” in work meetings compared to 33% of lawyers of color. Women lawyers of color are even less likely to feel they are heard “almost all the time” in work meetings: only 25% 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.<sup>7</sup>

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

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

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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?

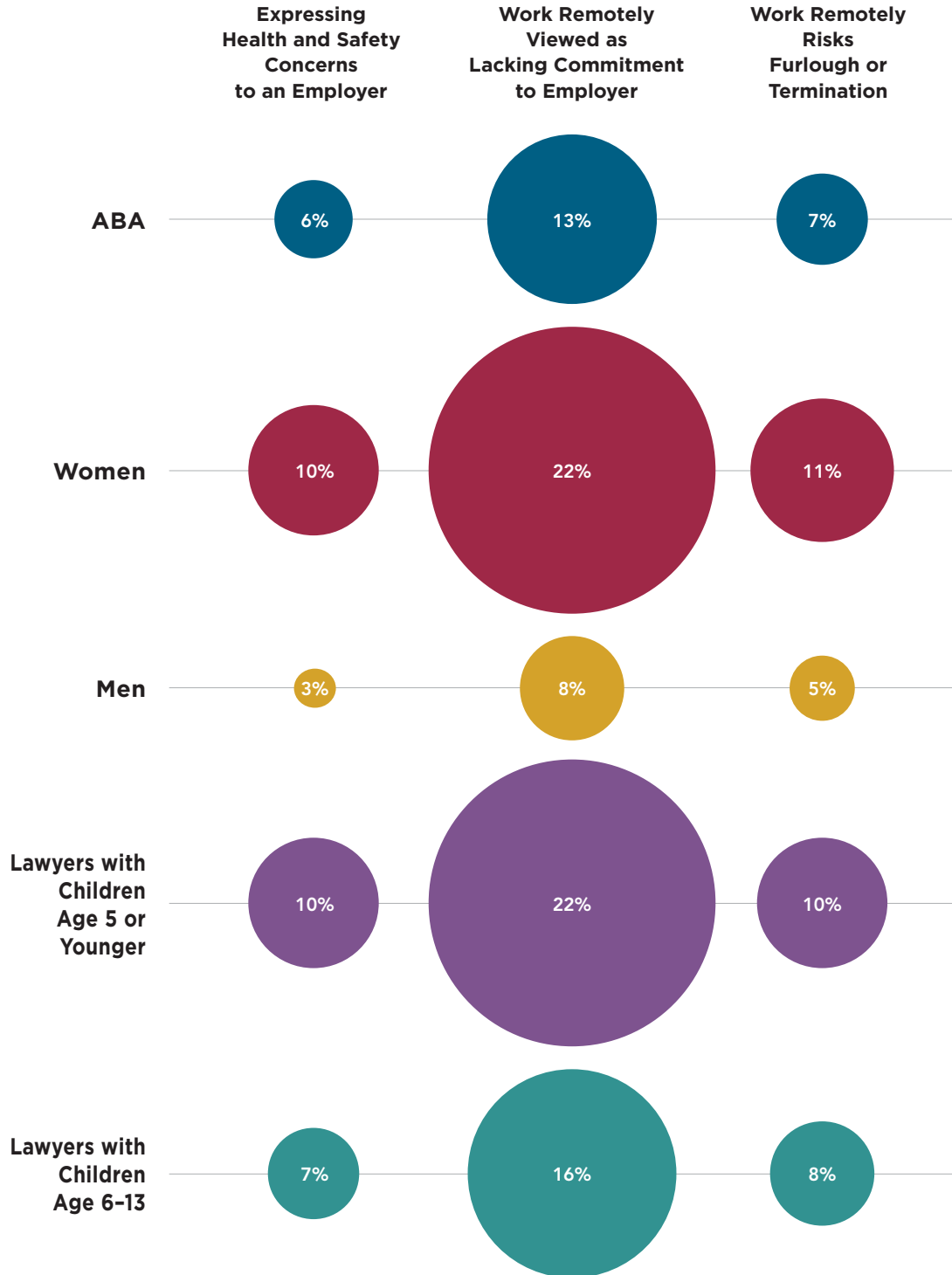
### 1. Health and Safety

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:

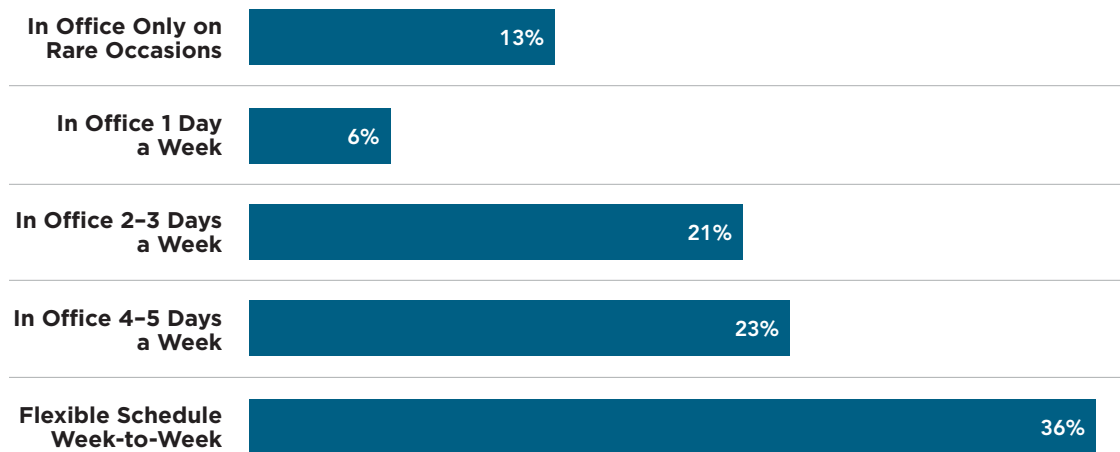


## 2. Viability of Remote Working and Resources Needed

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%).<sup>8</sup>

### IDEAL MIX OF OFFICE + REMOTE

#### ABA



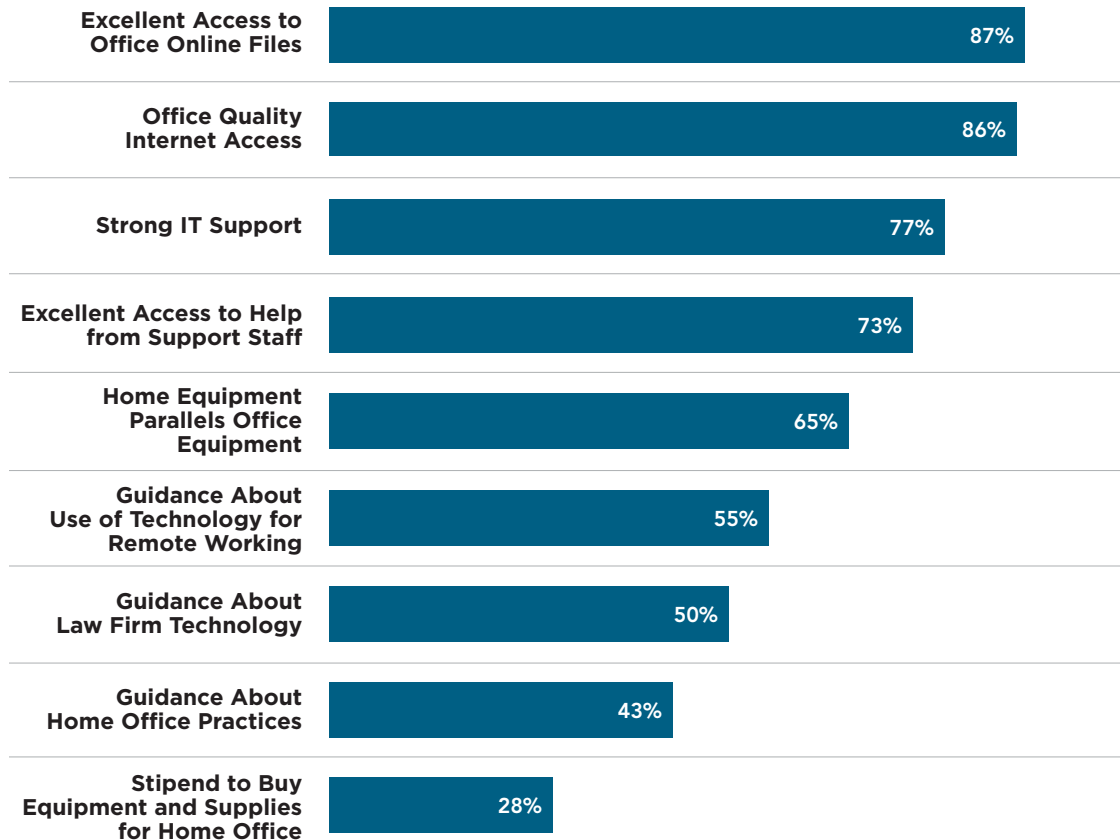
In spite of an expectation of continued remote working, the responses show some uncertainty about how employers will implement a remote working plan. The majority of lawyers anticipate that in 2021 and 2022, there will be “substantially less need for office space.” On the other hand, the large majority 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

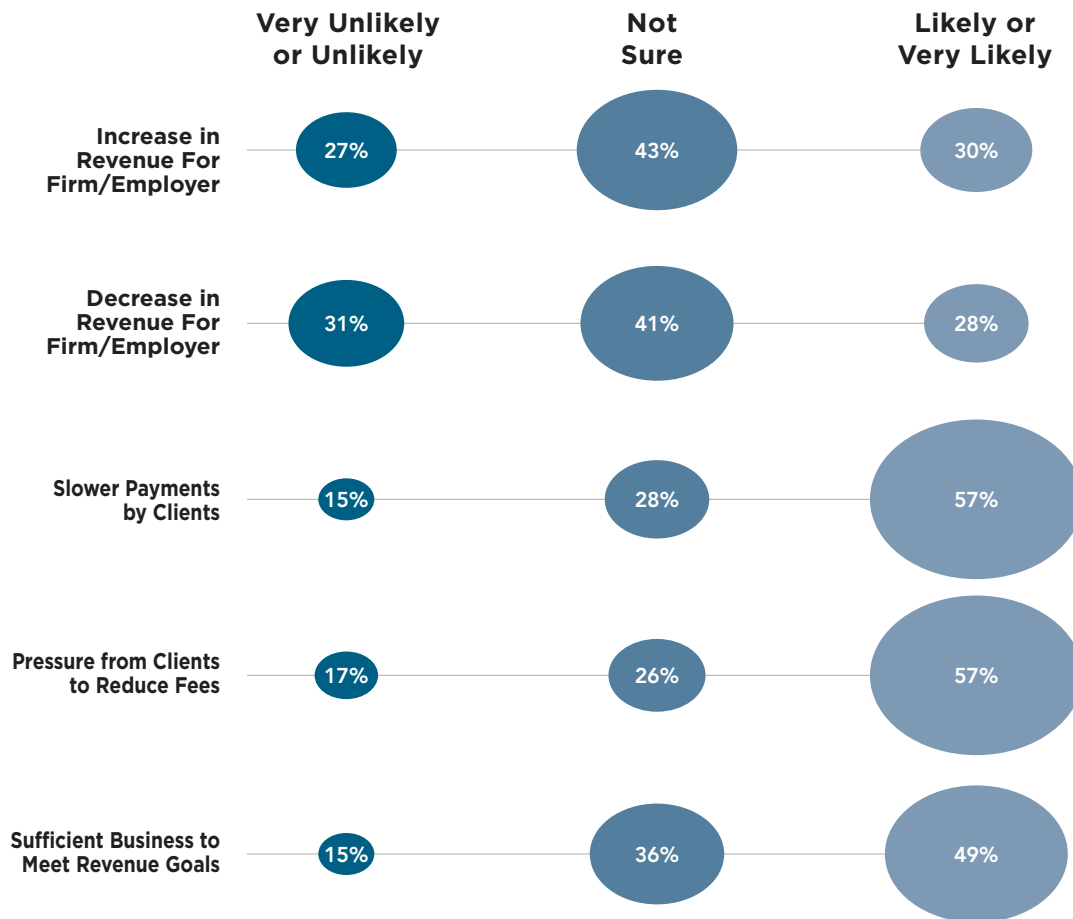
We asked a series of questions to elicit how lawyers feel about the business of law in their specific workplace as they emerge from the pandemic in 2021 and looking ahead to 2022. The majority of respondents expressed mixed feelings about what the near future would bring. First, most lawyers anticipate 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.

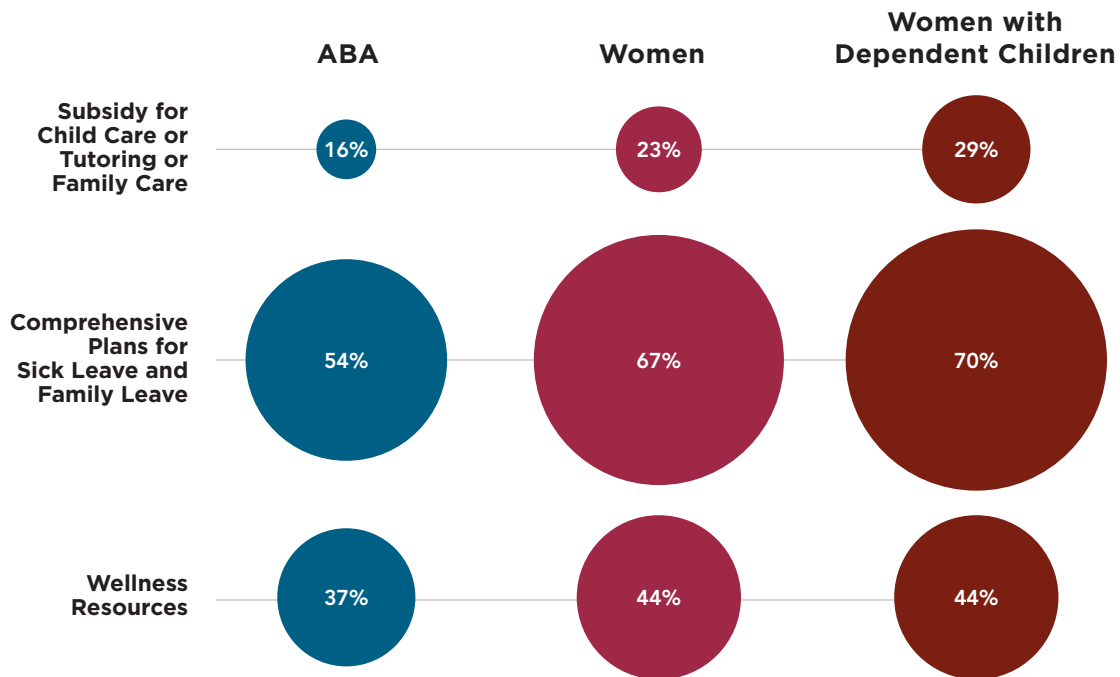
### *1. Personal and Family Well-being*

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.

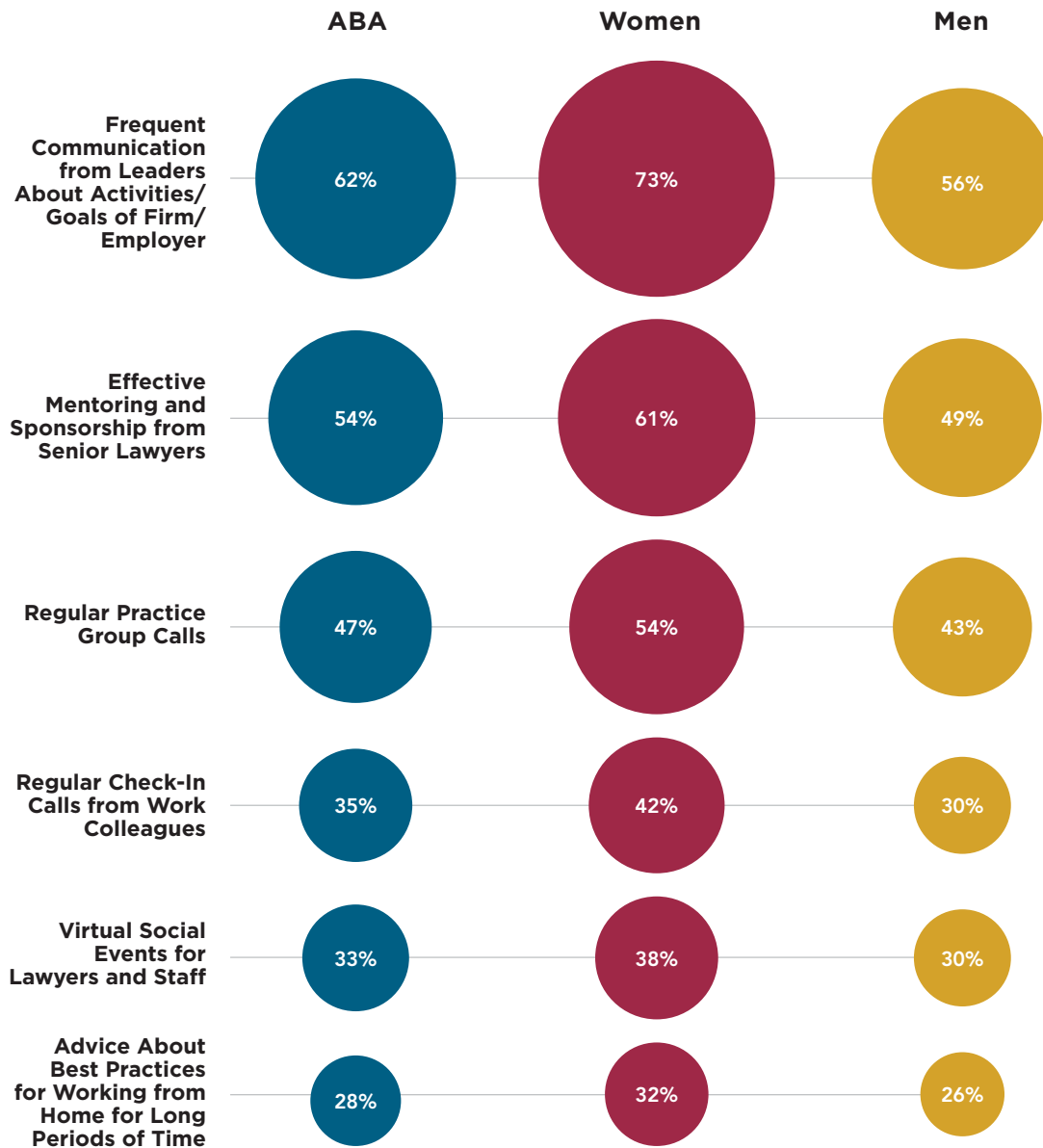
## *2. Employee Engagement with Their Firms, Companies, and Other Employers*

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).



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

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### 3. Policy Adjustments to Be Made by Firms and Corporations

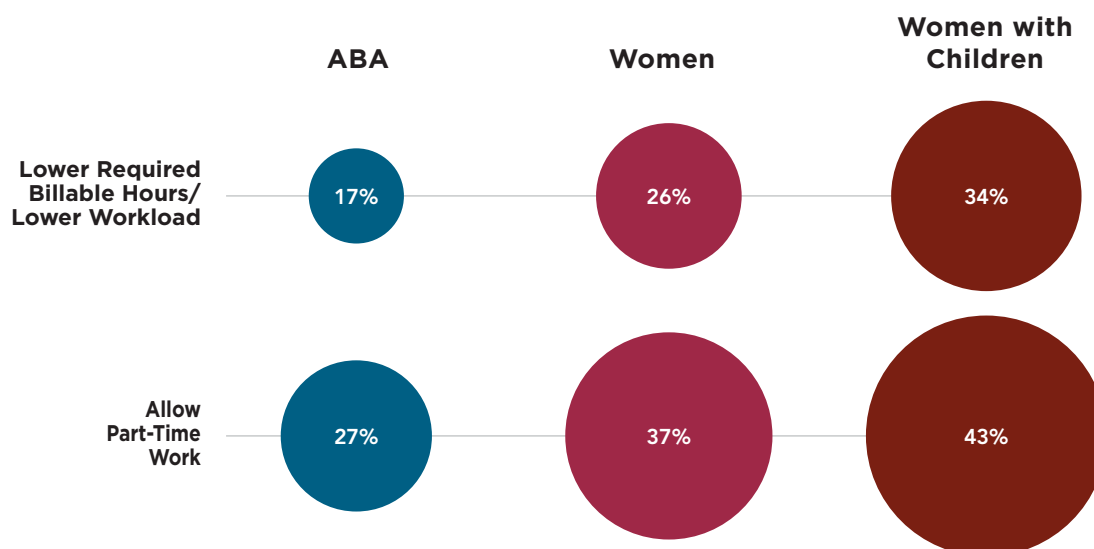
There is still another aspect to successful post-pandemic practice: employer policies and practices that foster high quality work while at the same time providing the information, flexibility and support that a diverse profession requires.

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.

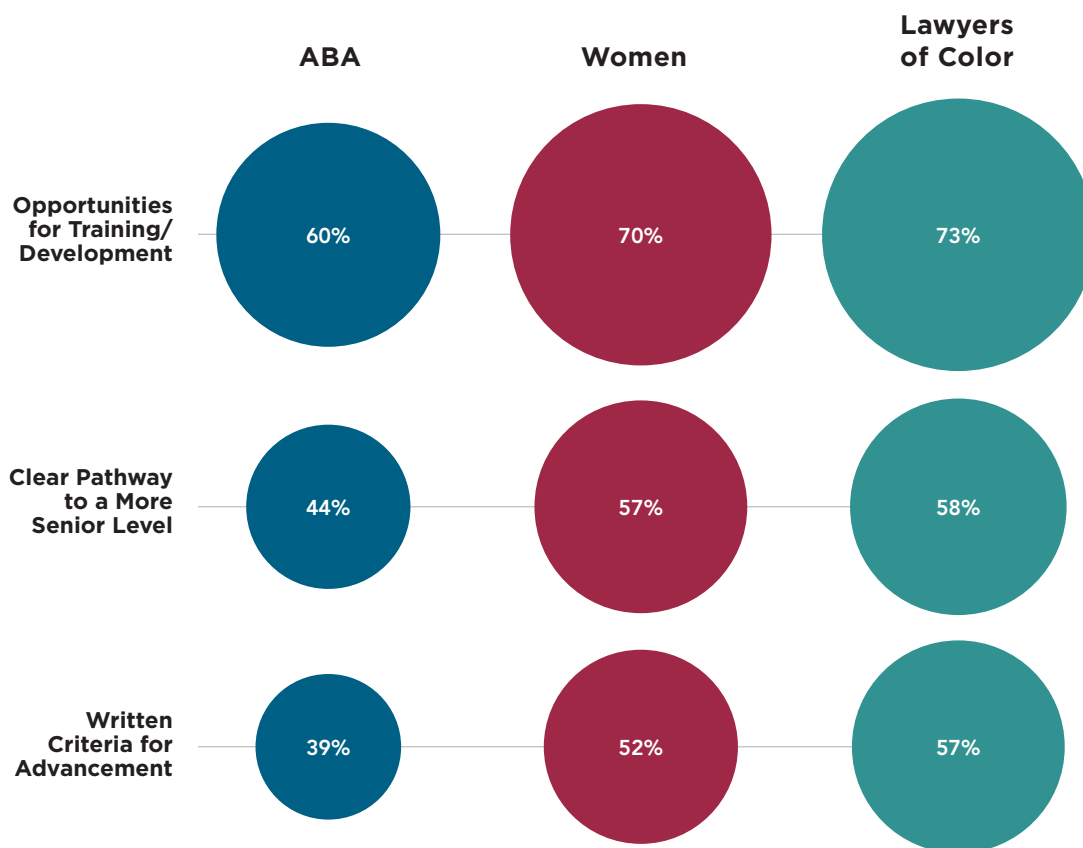
#### REDUCED WORKLOAD OR PART-TIME WORK: VERY OR EXTREMELY IMPORTANT



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%).

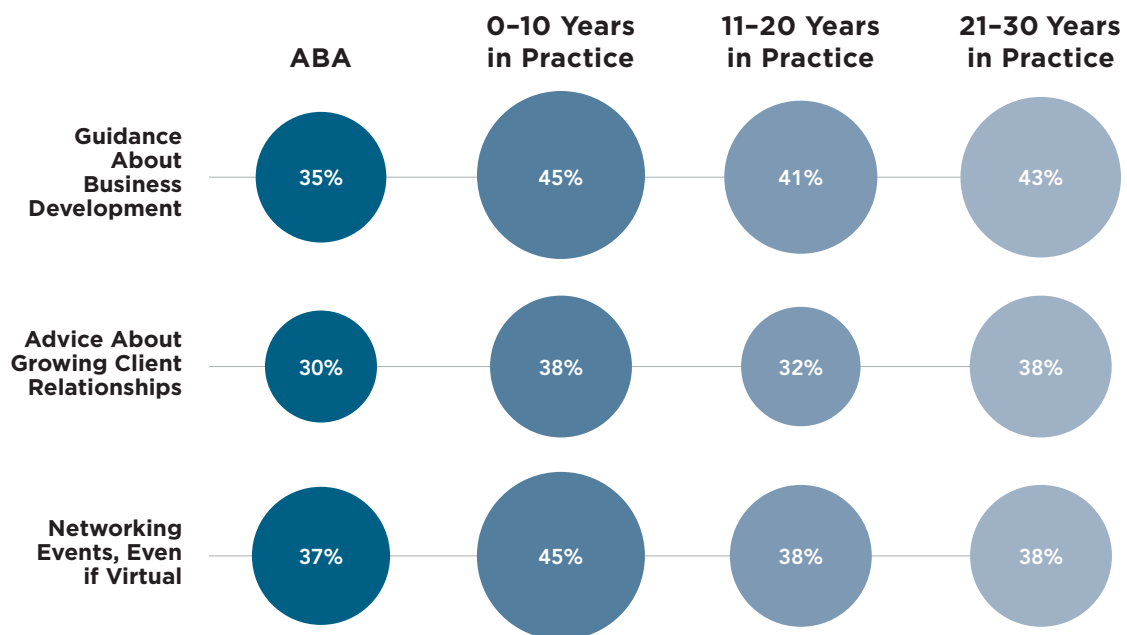
The majority of lawyers also responded that it is “very important” or “extremely important” that part-time policies are transparent, and that employers provide written criteria for advancement, a clear pathway to advancement to more senior levels, and opportunities for development of professional skills. 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

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*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.*

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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.

## ***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.

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.

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

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.



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.

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Better support for  
working parents  
is essential.

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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.

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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.

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## ***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



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

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**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.

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

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# 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](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.

# Diverse employees are struggling the most during COVID-19—here's how companies can respond

New global research shows that despite companies' recent efforts, diverse employees need more. Businesses should ask themselves new questions for a changed workplace.

*This article was a collaborative effort by Kweilin Ellingrud, Mekala Krishnan, Alexis Krivkovich, Kathryn Kukla, Ana Mendy, Nicole Robinson, Sandra Sancier-Sultan, and Lareina Yee.*



**Almost a year** into the COVID-19 crisis, employees are still crying out for more support. Diverse groups—including women, LGBTQ+ employees, people of color, but also working parents—are having the hardest time, both in the workplace and with balancing work and home life.

To understand the challenges diverse employees are grappling with in the COVID-19 environment, we recently conducted surveys and interviews and examined data across 11 developed and developing countries (see sidebar, “Our survey methodology”).<sup>1</sup> We discovered that workers across demographic groups and geographies reported a remarkably similar set of challenges related to mental health, work–life balance, workplace health and safety, a missing sense of connectivity and belonging with colleagues, and concerns about job opportunities.

However, there were also differences. The severity and prevalence of these challenges, such as with mental health, were far higher in developing countries than in developed nations. Among diverse groups, these concerns were both higher in number and felt with greater urgency. Women in particular are worried about the health and safety of on-site workplaces and mental-health issues. They are also more concerned than men about increased household responsibilities—suggesting that the stress of the “double shift” continues to be a gendered issue around the world. Women in emerging economies such as India and Brazil are two to three times more likely to report challenges as their peers in developed countries, suggesting that gender and local context may have a compounding effect.

Employees who identify as lesbian, gay, bisexual, transgender, queer, or gender nonbinary (LGBTQ+) disproportionately fear losing ground at work and report feeling isolated. They report more acute work-related challenges than their straight and cisgender peers, including workload increases and stress over performance reviews, as well as a

heightened loss of connectivity and belonging. This may contribute to the fact that LGBTQ+ employees are more likely to report challenges with mental-health issues.

In majority-white countries, people of color (POC) are especially worried about workplace health and safety, as well as career progression and balancing responsibilities at home. The disparity compared with their white counterparts is particularly stark for POC in the United States.

What do these results mean for companies? We find that employers are well aware of the challenges facing employees, and that nearly all companies have implemented COVID-19-specific policies and programming to support workforces during this unprecedented time. Many of these policies help address the specific challenges highlighted by diverse employees. When we asked executives to what degree their CEO prioritized diversity, equity, and inclusion (DEI) during the pandemic, nine out of ten responded that even with the pressures of the crisis, DEI remains a moderate, very important, or top priority. Furthermore, two out of five companies globally are expanding their investments in DEI programs even as they make budget cuts elsewhere.

Still, nine out of ten executives we surveyed report challenges in executing their DEI strategies. Although companies have responded rapidly, employees—and in particular diverse employees and working parents—are still struggling with the multitude of challenges posed by the pandemic. The result: only one in six diverse employees feels more supported now.

Difficulties related to COVID-19 are unlikely to be resolved soon. For many of the 11 countries in our survey, coronavirus case counts are continuing to rise, and companies are planning responses well into 2021. Our survey shows that employees also expect the challenges we highlighted above to continue for months.

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<sup>1</sup> Countries covered by this research are Australia, Brazil, Canada, China, France, Germany, India, Ireland, Mexico, the United Kingdom, and the United States.

Despite this sobering data, leaders now have an opportunity to build a more equitable and inclusive workplace that will strengthen their organizations far beyond COVID-19. Businesses that seize the moment will not only be better placed to support their employees but also will drive sustainable business performance.

McKinsey research shows that companies in the top quartile for diverse leadership teams outperformed less diverse peers on profitability. Stalled progress on diversity will make a long and challenging road even tougher. It may also result in negative perception among customers, current employees, and potential talent who increasingly view diversity as a priority. And this may only increase going forward—our 2019 *Women in the Workplace* research finds that younger generations in particular are twice as likely to raise the need for DEI than older employees. Finally, the qualities that characterize diverse and inclusive companies—notably innovation and resilience—will be crucial as companies recover and transition to the next normal.

In this article, we will dig deeper into our global survey data to highlight key trends and concerns and pose questions companies should be asking themselves about how to better serve diverse employee populations through this crisis and beyond it.

## The COVID-19 crisis and diverse employees

### The pandemic has amplified earlier inequities

Even before the pandemic began, progress on advancing diversity, equity, and inclusion in the workplace and the economy as a whole had been slow. Historical challenges for diverse groups have only been exacerbated by the COVID-19 crisis.

We focus here on impacts in the workforce (though some diverse populations may also be experiencing

the health impacts of COVID-19 more acutely). Women are highly concentrated in sectors that are expected to suffer high rates of unemployment in 2020, including hospitality, food services, and retail. As of September 2020, only 53 percent of the US adult Black population was employed, compared with 57 percent of the corresponding white population,<sup>2</sup> and 39 percent of jobs held by Black workers are vulnerable as a result of the COVID-19 crisis, compared with 34 percent for white workers. Vulnerable jobs are subject to furloughs, layoffs, or being rendered unproductive (for example, workers kept on payroll but not working) during periods of high physical distancing. Similarly, 65 percent of US Hispanics and Latinos work in the five sectors that are suffering the largest drops in GDP during the pandemic, including leisure and hospitality and retail trade.

Of those still working, mothers may be disproportionately affected. For example, US mothers with young children have reduced their work hours at a rate that is four to five times higher than fathers to take on childcare, homeschooling, and household responsibilities.<sup>3</sup> US mothers are also 1.5 times more likely than fathers to spend an extra three or more hours a day on housework and childcare—equivalent to 20 hours a week, or half a full-time job. In India, women report a 30 percent increase in household responsibilities.<sup>4</sup>

Our recent *Women in the Workplace 2020* report confirmed that in the United States and Canada, the burden of this double shift has led one in four women in corporate jobs to consider downshifting her career or leaving the workforce.

### Everyone is struggling, but some more than others

*The crisis is hitting emerging economies the hardest.* All employees are struggling during the COVID-19 crisis and report an array of challenges in their lives, particularly in the areas of mental and physical health, concerns around workload

<sup>2</sup> "The employment situation – September 2020," US Department of Labor, Bureau of Labor Statistics, September 2020, bls.gov.

<sup>3</sup> Caitlyn Collins, et al., "COVID-19 and the gender gap in work hours," *Gender, Work & Organization*, July 2020, onlinelibrary.wiley.com.

<sup>4</sup> Roopa Purushothaman, et al., "Opening with care," *Hindustan Times*, June 19, 2020, hindustantimes.com.

## Our survey methodology

**To understand and quantify** the variations in employee experiences during the pandemic—and how companies are and should be responding to those needs—McKinsey recently conducted global surveys with 1,122 executives and 2,656 employees across 11 countries.

The executive survey was in the field from August 19 to September 1, 2020. The executive respondents worked for companies with \$500 million+ (or equivalent) in annual revenue and 250+ employees. The survey sample spans the following countries: Australia, Brazil, Canada, China, France, Germany, India, Ireland, Mexico, the United Kingdom, and the United States). Of the 1,122 executives surveyed, 15 percent were US-based.

The employee survey was in the field from August 19 to September 1, 2020. The survey sample spans employees from

companies with the same revenues and employee size as listed above. The survey also spanned the same countries previously listed. Of the employee respondents, 22 percent of the sample were US-based and 7 percent were part-time employees.

We examined impacts of COVID-19 on various employee segments: women, LGBTQ+, people of color (in countries with large white populations for which data was available for this group, namely Brazil, Canada, France, the United Kingdom, and the United States), and parents. We sometimes refer to the first three groups collectively as “diverse employees.”

To the extent possible, responses in each country were capped by gender, ethnicity, and sexual orientation to mirror the respective populations in each geography based on latest available information (for example, country census). To ensure statistically

significant differences in responses cited by various respondent subgroups (for example, working mothers, LGBTQ+ people) we applied a two-tailed chi-squared test.

To aggregate results globally or by region from our employee survey, we weighted responses for each employee category in a country (for example, women or working parents) by the overall share of respondents from that country in our data set. This allowed us to appropriately compare across different cohorts in a manner that controlled for country-specific dynamics.

While we do occasionally compare responses from our employee survey with that of our employer survey, it is important to note that the two surveys were independently conducted and therefore may not encompass the same set of companies.

increases, fears of stalled growth and a lack of progress opportunities, and loss of connectivity and belonging with colleagues (Exhibit 1).

While difficulties are common to every country, employees in emerging economies are clearly struggling more. Among all workers, those in emerging economies cited markedly more challenges, and reported feeling them more acutely than those in developed economies. In fact, acute challenges (those that are felt “significantly” by respondents) are two to three times more common for employees in emerging economies than for employees in developed economies (Exhibit 2). For example, in India, Brazil, and China, 75 to 90 percent of respondents cite workplace health and safety

and mental health as challenges in the COVID-19 context, compared with 50 to 60 percent of those in the United States, the United Kingdom, and France.

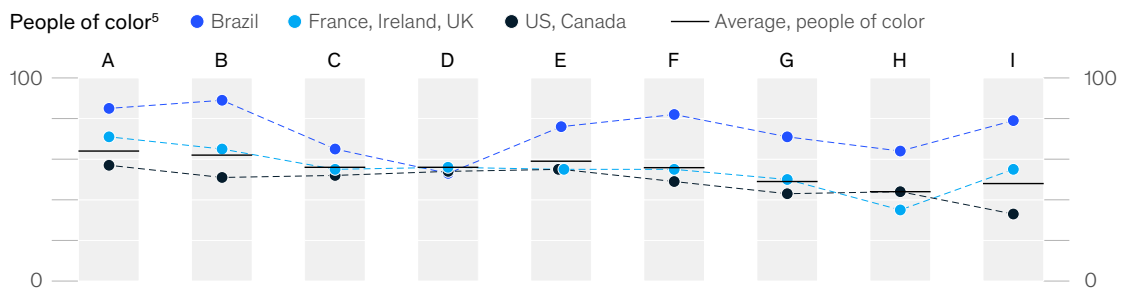
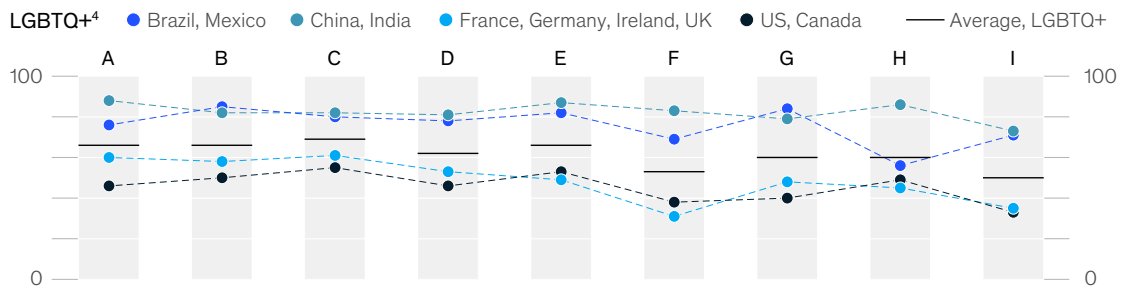
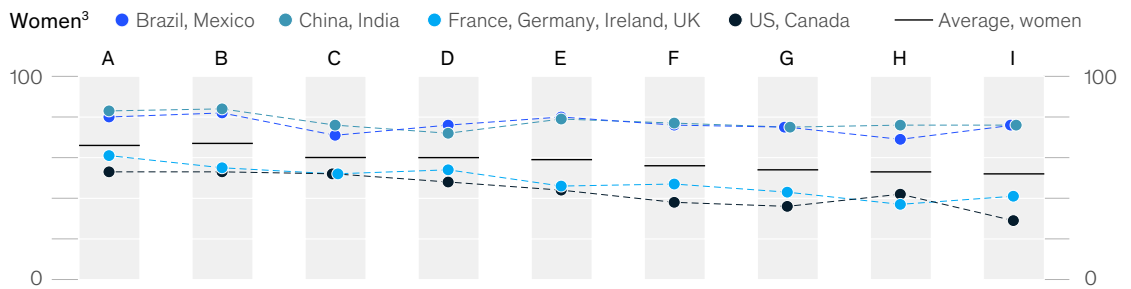
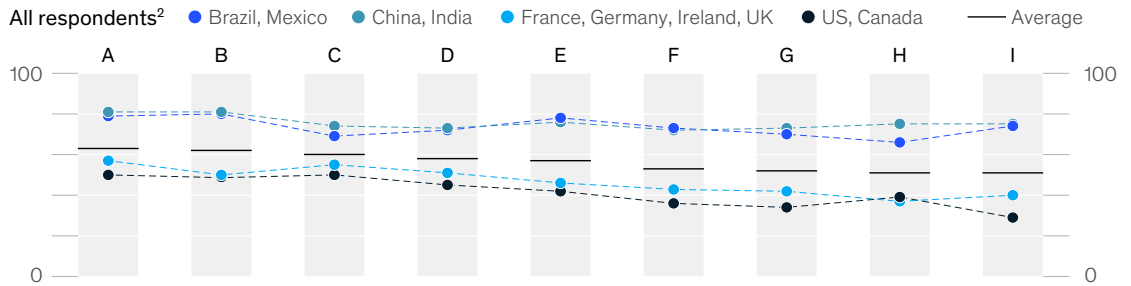
Moreover, in every country, members of diverse populations reported additional challenges and felt them more acutely than their nondiverse counterparts. For example, nondiverse employees in the United States have experienced, on average, one acute challenge during the COVID-19 crisis, in addition to several other moderate challenges (those that are reported as being felt “somewhat” by respondents). Their diverse US colleagues reported 1.6 acute challenges. For a diverse employee in China, this number rises to 3.4 acute challenges on average, and for a diverse employee in India, it's 6.7.

Exhibit 1

## Globally, employees in emerging economies are more likely to report challenges during the COVID-19 pandemic.

Challenges during COVID-19,<sup>1</sup> % of respondents who answered 'significant' or 'somewhat'

A Healthy and safe on-site workplace B Mental health C Connectivity and belonging D Workload increases E Growth and progress opportunities F Household responsibilities G Fair performance evaluation H Job insecurity I Physical health



Note: Countries included in the survey are Australia, Brazil, Canada, China, France, Germany, India, Ireland, Mexico, United Kingdom, and United States.

<sup>1</sup>Question: Please indicate which of the following has been challenging for you as an employee during the COVID-19 crisis.

<sup>2</sup>All respondents, n = 2,656; Brazil and Mexico, n = 406; China and India, n = 641; France, Germany, Ireland, and UK, n = 667; US and Canada, n = 737.

<sup>3</sup>All women respondents, n = 1,356; Brazil and Mexico, n = 201; China and India, n = 337; France, Germany, Ireland, and UK, n = 321; US and Canada, n = 400.

<sup>4</sup>All LGBTQ+ employees, n = 334; Brazil and Mexico, n = 52; China and India, n = 147; France, Germany, Ireland, and UK, n = 62; US and Canada, n = 62.

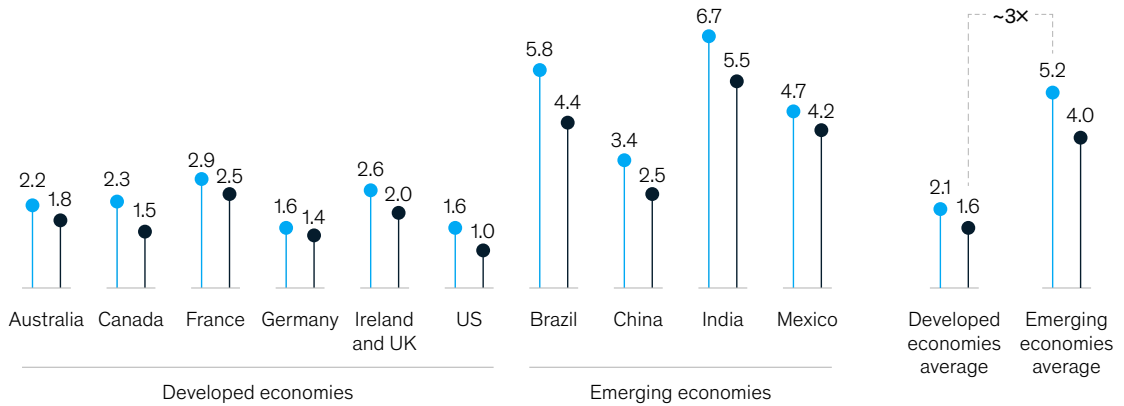
<sup>5</sup>All people-of-color respondents, n = 429; Brazil, n = 66; France, Ireland, and UK, n = 66; US and Canada, n = 250.

Source: McKinsey 2020 Global Diversity, Equity, and Inclusion/COVID-19 Employee Experience Survey

Exhibit 2

**Diverse employees cite more acute challenges than their nondiverse peers, particularly in emerging economies.**

**Average number of significant challenges reported during the COVID-19 crisis<sup>1</sup>** ● Diverse<sup>2</sup> ● Nondiverse



<sup>1</sup>Question: Please indicate which of the following has been challenging for you as an employee during the COVID-19 crisis (Australia, n = 205; Brazil, n = 202; Canada, n = 160; China, n = 323; France, n = 215; Germany, n = 207; India, n = 318; Ireland and UK, n = 245; Mexico, n = 204; US, n = 577). Acute challenges are those where respondents described the challenge as being "significant" (other options included "somewhat," "not a challenge," and "not applicable"). Challenges encompass those in the workplace (eg, workload increases) and in balancing home- and work-life (eg, increased household responsibilities).  
<sup>2</sup>Employees who identify as women, LGBTQ+, or a person of color (POC). POC data limited to respondents from Australia, Brazil, Canada, France, United Kingdom, and United States.  
 Source: McKinsey 2020 Global Diversity, Equity, and Inclusion/COVID-19 Employee Experience Survey

While geography plays an important role in employee experience during the pandemic, our survey data also show that women, LGBTQ+ employees, POC, and parents are having the hardest time (Exhibit 3).

**Women face disproportionate stress.** Across geographies, women are struggling more than men across personal as well as professional fronts. Women are 1.5 times as likely as men to cite challenges pointing to a “double shift”: acute challenges with mental health and increased household responsibilities. Women are 1.2 times as likely to cite acute difficulties with workload increases, connectivity and belonging in the workplace, having a healthy and safe worksite,

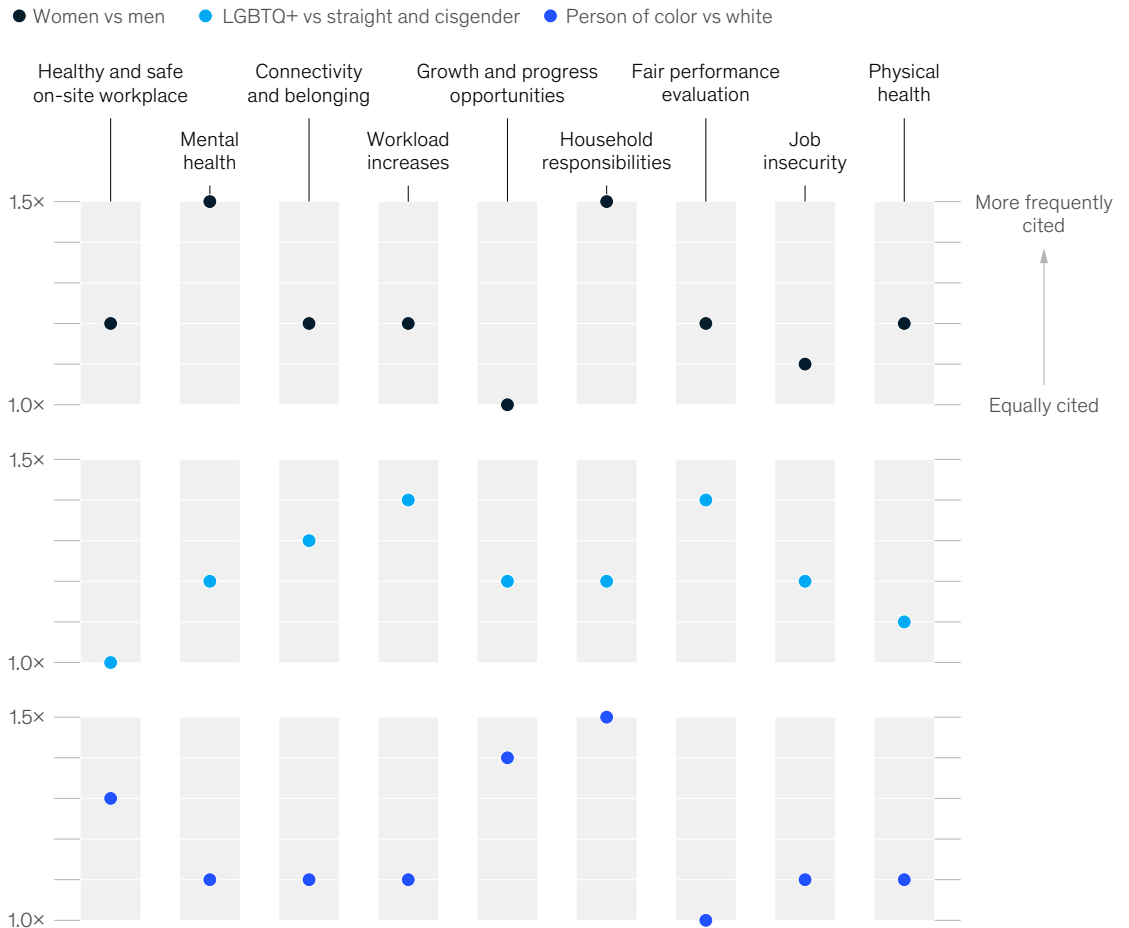
performance reviews, and physical health. One of the most profound differences appeared around mental-health issues in the United Kingdom and the United States, where women are 2.9 times and 2.6 times as likely to report acute challenges, respectively, compared with their male counterparts.

In emerging economies, women have it far worse. More than 60 percent of women in emerging economies are suffering from acute or moderate challenges—sometimes double the rate of their peers in developed economies. Women in China, India, and Brazil are two to three times as likely to say they are facing acute challenges from mental-health issues as their peers in the United States and European countries.

Exhibit 3

**Women, LGBTQ+ employees, and people of color are more likely to report acute challenges during the pandemic.**

**Likelihood of diverse<sup>1</sup> respondents citing a 'significant' challenge during the COVID-19 crisis vs nondiverse respondents,<sup>2</sup> multiple**



<sup>1</sup>Employees who identify as women, LGBTQ+, or a person of color (POC). POC data limited to respondents from Australia, Brazil, Canada, France, United Kingdom, and United States.

<sup>2</sup>Please indicate which of the following has been challenging for you as an employee during the COVID-19 crisis (women, n = 1,356; men, n = 1,296; LGBTQ+, n = 334; straight, n = 2,249; person of color, n = 429; white, n = 1,175).

Source: McKinsey 2020 Global Diversity, Equity, and Inclusion/COVID-19 Employee Experience Survey

*For LGBTQ+ employees, fears of isolation and losing ground at work loom large.* The allyship found in social and work settings is an important source of belonging among many in the LGBTQ+ community. While many straight and cisgender people also feel isolated during the COVID-19 crisis, the negative impact is felt more acutely by LGBTQ+ people who may find themselves even more

isolated in the absence of interactions with LGBTQ+ colleagues, their employee resource group, or other support structures.

The data showed quite clearly that LGBTQ+ employees across geographies are struggling with work in a pandemic world. Compared with straight and cisgender employees, LGBTQ+ respondents



are 1.4 times as likely to cite acute challenges with fair performance reviews and workload increases and are struggling similarly with a loss of workplace connectivity and belonging. It's perhaps not surprising then that two out of three LGBTQ+ employees report either acute or moderate challenges with mental health.

Geographically, the differences between LGBTQ+ and straight and cisgender employees are most marked in Asia, where nearly twice as many LGBTQ+ as straight and cisgender respondents cited acute challenges with fair performance reviews and workload increases.

*People of color single out work safety and career prospects.* For people of color across the survey, acute challenges are more commonly felt across workplace health and safety, career progression, and household responsibilities. Concerns over workplace health and safety are perhaps unsurprising given the disproportionate health impacts experienced by people of color.

These differences in experiences between POC and white people is particularly stark in the United States. While a smaller share of POC report

challenges in the United States than in Brazil, for instance, the gap relative to their white counterparts is much greater. POC in the United States are more likely to cite acute challenges than white Americans. Particular pain points include concerns related to career progression (2.2 times as likely) and household responsibilities (2.1 times).

*Parents fear stalling careers while challenges mount at home.* In the pandemic context, challenges extend to a group that's not typically considered part of the traditional DEI agenda: employees with children. This is particularly true in countries where schools remain closed. Their challenges extend beyond childcare and home schooling, with parents in countries with full school closures reporting higher challenges, for example with mental-health issues and increased workloads. Parents are also more likely than nonparents to cite acute concerns across many dimensions (Exhibit 4).

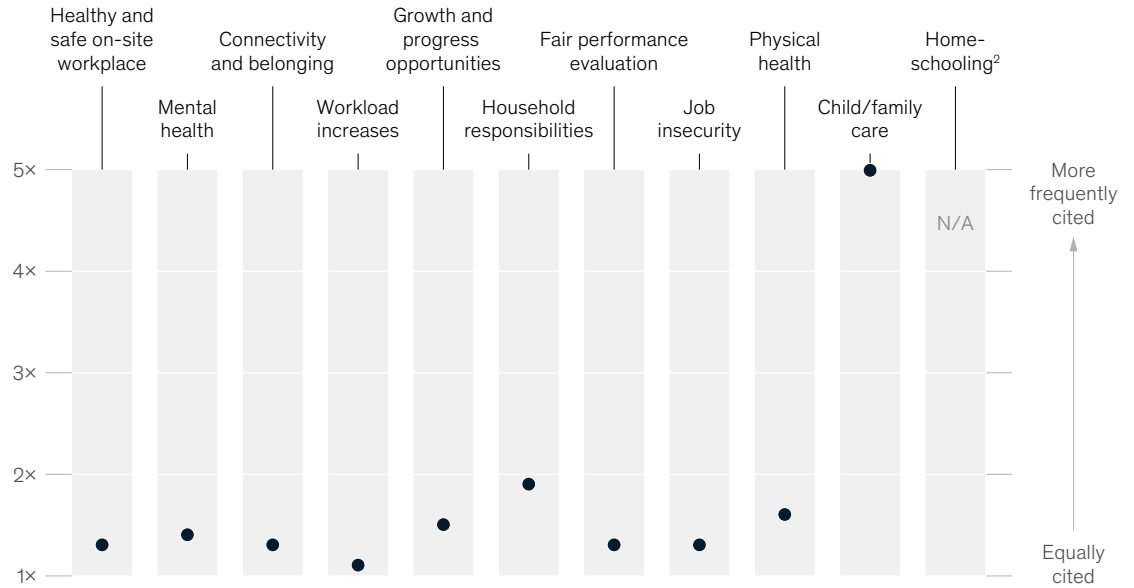
Our survey data also show that more mothers struggle with household responsibilities and mental-health concerns compared with fathers (at 73 percent versus 65 percent, and 75 percent versus 69 percent, respectively, citing these challenges as either acute or moderate).

**Our survey shows that employees do not feel these challenges are temporary. That means companies should prepare for several factors to have an outsize impact on diverse populations.**

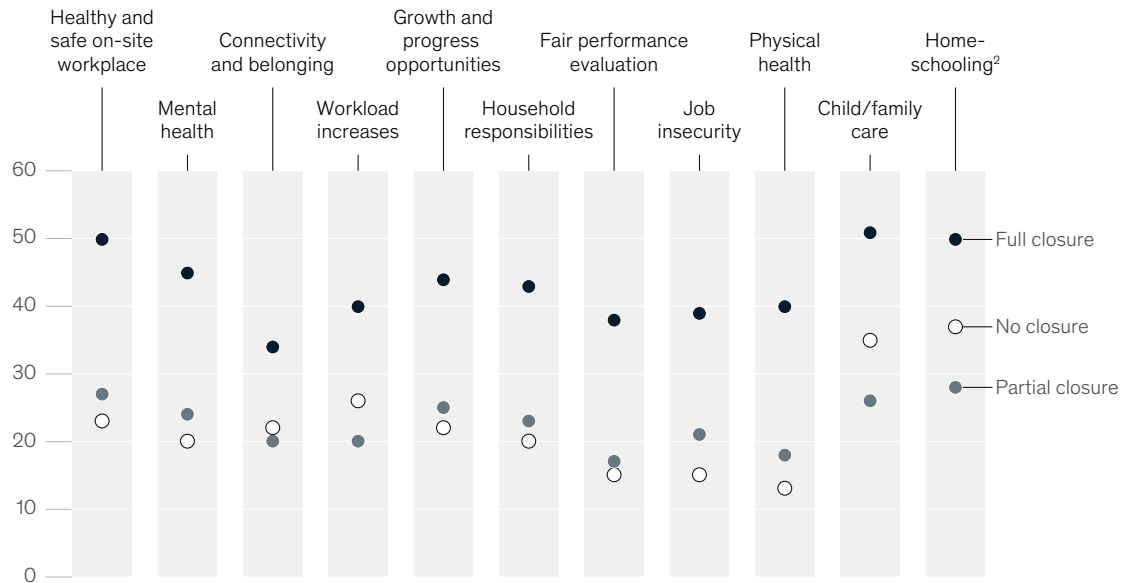
Exhibit 4

**Working parents are more likely to cite challenges than nonparents, and school closures in particular place an extra burden on working parents.**

**Likelihood of parents citing a 'significant' challenge during the COVID-19 crisis vs nonparents,<sup>1</sup> multiple**



**Share of parent respondents citing a 'significant' challenge during the COVID-19 crisis, by school closure,<sup>1</sup>%**



<sup>1</sup>Please indicate which of the following has been challenging for you as an employee during the COVID-19 crisis (parents, n = 1,397; nonparents, n = 1,259; full school closure, n = 655; partial school closure, n = 567; no school closure, n = 175). Acute challenges are those where respondents described the challenge as being "significant" (other options included "somewhat," "not a challenge," and "not applicable").

<sup>2</sup>This category is primarily relevant for parents, and hence has been marked as "N/A."

Source: McKinsey 2020 Global Diversity, Equity, and Inclusion/COVID-19 Employee Experience Survey; UNESCO global monitoring of school closures caused by COVID-19

*Employees expect these challenges to linger.* Our survey shows that employees do not feel these challenges are temporary: in particular, a larger share of employees expects workload increases to be a continuing challenge; it jumps from being in the top ten most reported challenges today to being in the top three most expected challenges in the next six months. Long term, companies should prepare for several factors to have an outsize impact on diverse populations—ongoing mental-health challenges, school closures, and lack of access to offices and in-person interaction.

## Companies are striving to meet rising employee needs and expectations

### Safety and flexibility are the priorities for companies

Companies aren't in the dark about these struggles and, in fact, we find that they are trying to innovate to cope. Our survey of employers shows that businesses recognize the same top challenges as reported by employees: worries about physical

safety in the workplace, mental-health issues, and maintaining office connections with colleagues. Companies also understand that most employees have more responsibility than ever before, both through increased workloads and additional home responsibilities.

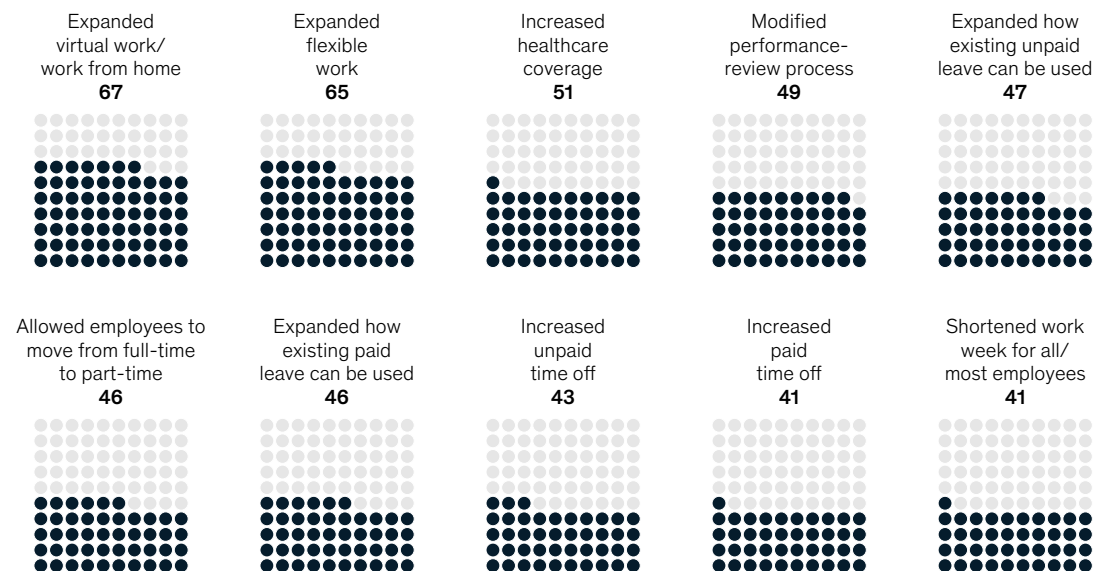
In response, 96 percent of businesses globally have launched innovations in their HR policies and added new resources to support their employees, and they have adopted these changes quickly. Executives report that they have implemented a variety of changes, including expanded remote and flexible work, increased paid and/or unpaid time off, additional flexibility to move from a full-time to a part-time schedule, expanded policies for how existing paid and unpaid leave can be used, and shortened workweeks (Exhibit 5).

The good news is that companies are largely investing in the same areas that employees cite as their most wished-for benefits, particularly remote and flexible work.

Exhibit 5

## Companies have adjusted and expanded policies to support employees.

Policy changes implemented to support employees during the COVID-19 crisis,<sup>1</sup> % of respondents



<sup>1</sup>Question: Since the start of the COVID-19 crisis, which of the following policy changes has your company implemented to support your workforce? (n = 1,122 executives globally).  
Source: McKinsey 2020 Global Diversity, Equity, and Inclusion/COVID-19 Executive Survey

### **Efforts to build diverse and inclusive workplaces continue**

The momentum goes beyond programs created in response to the pandemic and into continued prioritization and expanded budgets for DEI more broadly. When we asked executives to what degree their CEO prioritized DEI both before and during COVID-19, nine out of ten responded that even with the pressures of the COVID-19 crisis, DEI remains a moderate, very important, or top priority. Indeed, 29 percent said it was a top priority, and 40 percent said it was a very important priority. And when forced to rank against other business priorities during the pandemic, such as cost cutting or protecting growth, about one in three executives continued to say that DEI was a top five business priority.

Keeping DEI high on the CEO's agenda is critical because it means companies are significantly more likely to drive impact through action. Of businesses whose CEOs reportedly prioritize DEI, 97 percent have at least some DEI measures in place and only 3 percent lacked any DEI initiatives. However, of companies that don't consider DEI a priority, 22 percent didn't have DEI initiatives.

Globally, two out of five companies in our survey have increased their budgets for gender, race/ethnicity, and/or LGBTQ+ initiatives over the past six months. Executives in emerging economies such as China and Brazil were more likely to report investment increases, although it is possible these may have been from lower baselines. The US companies we surveyed fall in the middle of the pack for having increased race/ethnicity investments, despite the recent racial-justice movements that have swept the nation.

Looking ahead, employers should understand that employee expectations surrounding DEI initiatives are strong, particularly in emerging economies. Globally, workers expect employers to drive change in society: nine out of ten employees across all regions believe that companies should engage in external DEI initiatives, such as promoting supply-chain and distribution-channel diversity, pro bono efforts, and cradle-to-career initiatives.

In our survey, almost 100 percent of employees in emerging economies agreed that employers should engage in external DEI measures. This compares with 83 percent of employees in the United Kingdom, 80 percent of employees in France, 77 percent of employees in the United States, and 65 percent of employees in Germany. Our executive survey results suggest there is an opportunity for businesses to do more here; for example, only 41 percent of companies have made pro bono commitments, 47 percent support cradle-to-career initiatives that support diverse groups in the community, and about 50 percent set goals for supply-chain diversity.

### **But execution of DEI strategies is weak and gaps remain**

#### **Employees need more targeted support from their employers**

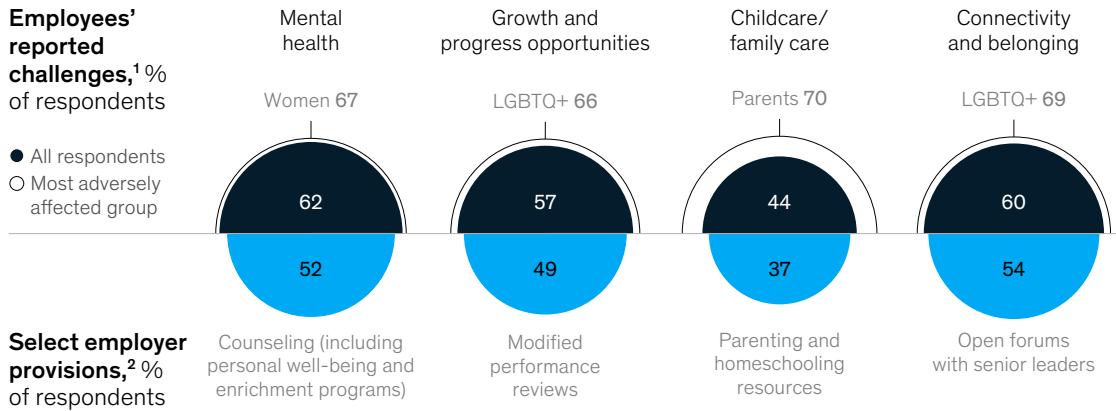
Although quick and effective company responses to the sudden shift to remote work may have alleviated some negative effects, employees—particularly diverse employees and working parents—are still struggling to cope with the wide range of pandemic challenges that go beyond remote working. And significant gaps remain. The share of companies responding to mental-health challenges, for example, remains below the share of workers reporting this as a continued challenge, with diverse populations feeling the gap most acutely.

For example, 44 percent of companies have implemented personal well-being and enrichment programs, and 52 percent offer mental-health/bereavement counseling. However, our employee survey showed that 62 percent of respondents consider mental-health issues a challenge, with higher reporting among diverse groups (Exhibit 6).

There is no magic-bullet solution. Given the complex nature of what drives mental-health challenges (for example, burnout, anxiety outside the workplace, uncertainty about the future), companies may need to invest in many areas at once, including interventions related to increased workloads and employees' sense of belonging.

Exhibit 6

**Despite companies' efforts, employees' challenges are not being fully addressed.**



<sup>1</sup>Question: Please indicate which of the following has been challenging for you as an employee during the COVID-19 crisis; answers considered: "significant," "somewhat."  
<sup>2</sup>Questions: Which of the following resources and supports are currently offered by your company to your employees?; Since the start of the COVID-19 crisis, which of the following policy changes has your company implemented?  
 Source: McKinsey 2020 Global Diversity, Equity, and Inclusion/COVID-19 Executive Survey (n = 1,122 executives globally) and McKinsey 2020 Global Diversity, Equity, and Inclusion/COVID-19 Employee Experience Survey (n = 2,656 employees globally)

The challenge for businesses will be even greater as they attempt to meet the different needs to different employee groups. For example, women are more appreciative of mental-health/bereavement counseling and personal well-being resources offered by their companies compared with men—perhaps because they are also more likely to report mental-health issues. Thirty-five percent of women rank counseling among the top three most important resources that their employers could provide during the COVID-19 crisis, slightly higher than 29 percent of men.

At the same time, for LGBTQ+ employees, health checks and healthcare services are the most appreciated employer-provided resource (versus the third-most appreciated for straight and cisgender employees). LGBTQ+ employees are also more likely to value increased time off (both paid and unpaid) than their straight peers. Perhaps because of their

concerns about career progression, they also value job training/reskilling more (32 percent, compared with 25 percent of straight and cisgender employees).

**Companies are having a hard time executing their DEI strategies**

Progress on diversity has been slow, and nine out of ten companies report that they struggle to implement their DEI initiatives. While there is no specific challenge that derails most businesses, common hindrances include a lack of employee awareness of programs (26 percent), financial incentives not aligned with DEI goals (25 percent), insufficient leadership role modeling (25 percent), rewards and recognition not being aligned with DEI (23 percent), and being stretched too thin (23 percent).

This disconnect has consequences. Only one in six diverse employees feels more supported during COVID-19 than they did before the crisis (the number

is similar for employees overall as well). There are also compounding effects by geography: for example, only 5 percent of women respondents in China and 9 percent of those in India reported feeling more supported by their employers during COVID-19 (compared with 22 to 29 percent of women in Brazil, France, Germany, Ireland, and the United Kingdom).

### **Next steps: New questions for a changed workplace**

The COVID-19 crisis has profoundly altered the workplace. Employers know they must address workplace health and safety for all employees in addition to supporting mental-health needs and fostering connectivity and belonging in remote environments, all against the backdrop of diverse employee populations dealing with unique experiences and inequities. How can companies find ways to address new challenges that disproportionately impact underrepresented and diverse groups?

As employers look to respond to what employees told us in this survey, they will need to rethink the traditional approach to diversity and inclusion. Here are five principles of a successful diversity plan, coupled with questions companies should ask themselves as they build it:

**Sharpen the DEI priority.** Putting DEI on the agenda and ensuring there is an empowered leader running the effort is a start, but businesses must dedicate resources—for example, budget and staff—accordingly. Setting and tracking clear aspirations (which only 50 percent of surveyed companies do) will also help to quantify progress even when there are competing attentions. They must find ways to address some of the challenges identified in our survey, including misalignment of financial incentives and a lack of accountability of senior leaders.

*Ask yourself: How will you keep diversity, equity, and inclusion at the top of your agenda and make sure the execution plan has teeth?*

**Resist business as usual.** Through our interviews with employers, we identified 33 core interventions to drive impact, ten of which are particularly relevant in the COVID-19 context (Exhibit 7). Companies need to be selective across this catalog, focusing on a few specific interventions that are relevant for this moment for their context, and then actually move the needle in their organization with disciplined execution.

*Ask yourself: How will you change your DEI agenda in response to the COVID-19 crisis?*

**Companies must find ways to address the challenges identified in our survey, including misalignment of financial incentives and insufficient leadership role modeling.**

Exhibit 7

**Be selective: Choose only a few interventions that will move the needle in your organization and be disciplined in the execution.**

**Interventions to drive impact, nonexhaustive**

● Particularly relevant during the COVID-19 crisis

Internal levers		External levers	Foundational practices
<b>Hiring</b>	<b>Retention and inclusion</b>	<b>Products, services, and operations</b>	Visible support and commitments from senior management
Talent-pool expansion (eg, using analytics, hiring from HBCUs <sup>1</sup> )	Strengthened partnerships with ERGs <sup>2</sup>	Supply-chain and distribution-chain diversity	Measurable aspirations and goals by diversity type and level
Job descriptions that excite a broader range of candidates	Allyship programs that are promoted and supported	Product and services development driven by inclusion in design	● Thorough quantitative and qualitative DEI <sup>3</sup> diagnostics (eg, updated regularly to reflect workforce changes)
Résumé screening without demographic identifiers	● Frequent employee pulse surveys	Customer/network engagement with company's DEI <sup>3</sup> initiatives	Ongoing monitoring of aspirations and linking them to incentives
Diverse recruiting slates	● Virtual/flexible work options, including extended family leave	Communications (eg, marketing and PR) leveraged for public messaging	Governance structures in place to drive DEI <sup>3</sup> program
<b>Promotions</b>	● Manager trainings for inclusive virtual/hybrid leadership	<b>Broader community</b>	Publicly available commitments and data on initiatives, progress, and goals
Mentorship and sponsorship for underrepresented groups	● New COVID-19 policies (eg, sick leave, work-from-home stipend)	Resource allocation through pro bono commitments and/or philanthropic support	
● Fair and objective performance reviews (including productivity tracking)	● Reskilling efforts to retain underrepresented talent	Cradle-to-career initiatives (eg, skill training, scholarships)	
Diverse slates for promotions/new positions created	● Developing and offering work reentry programs	● Leading public research	
Succession planning with diversity analytics and/or commitments	● Regular leadership communication and engagement (eg, townhalls)	Proactively help employees who have been let go/furloughed	
Conscious inclusion training			
Leadership training for underrepresented groups (including grants, tailored courses)			

<sup>1</sup>Historically Black colleges and universities.  
<sup>2</sup>Employee resource groups.  
<sup>3</sup>Diversity, equity, and inclusion.

**Tackle new challenges.** The imperative for mental health is clear across all employee groups, but particularly for women and LGBTQ+ employees. Companies need to think through the implications for their workforce and the role they can best play to support their employees. This could take many forms, ranging from provision of healthcare services

and counseling support to manager training. Steps employers take to tackle other challenges, for example, those related to workload increases or office connectivity, can also play a role.

*Ask yourself: What role should your company play in supporting employees on mental health?*

**Rethink flexibility and boundaries.** LGBTQ+ employees, and POC in particular, cited concerns with workload increases, and more workers expect this to be a challenge in the next six months. Addressing this may require companies to rethink expectations on worker productivity and performance, expand benefits like paid time off, and support employees in establishing boundaries between work and home life.

*Ask yourself: How should your company balance increasing pressures with the need to make work more sustainable for employees?*

**Leadership extends beyond your company walls.** Our survey found that employees across countries expect businesses to have an external voice on DEI—ranging from committing to community and philanthropic endeavors to engaging with suppliers. This suggests companies will benefit from additional strategic attention on how to pull these external

levers. Companies should examine their own aspirations, including how best to align their internal goals with a broader role in advancing DEI.

*Ask yourself: Where does your company have an opportunity or obligation to extend its DEI objectives into the external ecosystem?*

---

It is clear that diverse employees are bearing a disproportionate burden during the COVID-19 crisis. Now is the time for companies and leaders to seize the moment by providing needed support.

In a turbulent year like no other, there has never been as universal a need to reimagine working norms for all employees. Leaders must commit to building a more equitable and inclusive workplace to ensure a positive recovery for all.

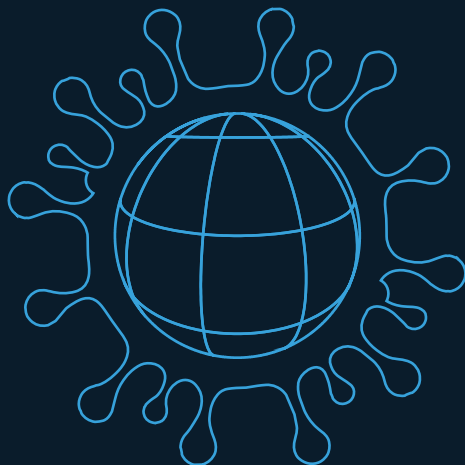
**Kweilin Ellingrud** is a senior partner in McKinsey's Minneapolis office; **Mekala Krishnan** is a McKinsey Global Institute senior fellow in the Boston office; **Alexis Krivkovich** is a senior partner in the San Francisco office, where **Nicole Robinson** is a consultant and **Lareina Yee** is a senior partner and McKinsey's chief diversity and inclusion officer; **Kathryn Kukla** is a consultant in the Pittsburgh office; **Ana Mendy** is a partner in the Southern California office; and **Sandra Sancier-Sultan** is a senior partner in the Paris office.

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# The COVID-19 crisis is hitting diverse employees hard.



## All employees are struggling



62%

of respondents are concerned with their own **mental health**



60%

of respondents are concerned with a lack of **belonging and connection**

## Emerging economies face the biggest challenges

75–90%



of respondents in Brazil, China, and India are concerned with **workplace health and safety** and **mental health**, compared with **50–60%** of those in France, the UK, and the US



Female employees are

1.5x

as likely as male employees to be concerned about challenges with **mental health** and balancing **household responsibilities**



LGBTQ+ employees are

~1.4x

as likely as straight and cisgender employees to be concerned about fairness of **performance reviews**, **workload increases**, and a lack of **connectivity and belonging**



Employees of color are

~1.5x

as likely as white employees to be concerned about **career progression** and balancing **household responsibilities**



Parents are

up to 5x

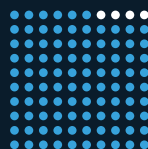
as likely as employees without children to be concerned about **career progression** and **challenges in the home**

## Companies are trying to match employee needs, but gaps remain



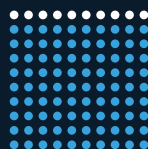
40%

of companies are raising **investment** in diversity, equity, and inclusion initiatives



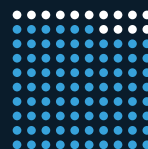
96%

of companies are **innovating HR policies and supports** in real time, focusing on expanded flexible and remote work



90%

of employees expect employers to **engage externally** in diversity, equity, and inclusion initiatives, with those in emerging economies expecting it most



86%

of companies report **challenges** in executing diversity, equity, and inclusion strategies



1 in 6

employees across all geographies feel **more supported** by their companies now than before COVID-19 crisis

## Employers have a clear agenda for action.



Sharpen diversity, equity, and inclusion priorities: set aspirations and address execution challenges



Resist business as usual: consider COVID-19 pandemic's implications on diversity, equity, and inclusion agenda



Tackle new challenges, such as mental-health support, head on



Rethink workplace flexibility and boundaries



Expand diversity agenda beyond company walls

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### Vicarious racism: a qualitative analysis of experiences with secondhand racism in graduate education

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## Vicarious racism: a qualitative analysis of experiences with secondhand racism in graduate education

Kimberly A. Truong<sup>a\*</sup>, Samuel D. Museus<sup>b,†</sup> and Keon M. McGuire<sup>c</sup>

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In this article, the authors examine the role of vicarious racism in the experiences of doctoral students of color. The researchers conducted semi-structured individual interviews with 26 doctoral students who self-reported experiencing racism and racial trauma during their doctoral studies. The analysis generated four themes that detail the different ways in which doctoral students of color in the study experienced vicarious racism and the consequences of this secondhand racism. These themes are (a) observed racism, (b) trickledown racism, (c) normalization of racism, and (d) racial resistance. The article concludes with implications for future research and practice.

**Keywords:** vicarious racism; racism; higher education

Racial and ethnic inequalities are a persistent and pervasive aspect of society in general and higher education in particular (Bonilla-Silva, 2013; Jayakumar & Museus, 2012). For example, in postsecondary education, racial disparities in doctoral degree completion exist, with Asian American (50%) and Black (47%) doctoral students exhibiting 10-year doctoral degree attainment rates that are significantly lower than their White counterparts (55%) (Council of Graduate Schools, 2009). In addition, while Black, Latino, Asian American, Pacific Islander, and American Indian or Alaska Native students comprised almost 31% of the national population in 2010 (US Census Bureau, 2012), they only constituted approximately 22% of all doctoral degrees conferred to US citizens and permanent residents (National Science Foundation, 2014). Despite some assertions that racism is not the cause of these inequalities (e.g. D'Souza, 1995, 1998), a plethora of evidence indicates that these disparities are indicators of systemic racism, which plays a major role in shaping the educational experiences and outcomes of people of color (Feagin, 1992; Feagin, Vera, & Imani, 1996; Jones, 1997; Lynn & Dixson, 2013).

Due to the fact that racial and ethnic inequalities and racism continue to be persistent problems in society and higher education, addressing them should be of paramount importance to higher education researchers, policymakers, and practitioners. Indeed, it is critical that higher education scholars generate more holistic

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understandings of the ways that race and racism shape experiences and outcomes in higher education, and it is equally important that policymakers and practitioners make concerted efforts to combat racism (Lynn & Dixson, 2013; Solórzano, 1998). The current inquiry advances current levels of understanding regarding the ways that race and racism shape doctoral student of color experiences, more particularly their experiences with vicarious racism. For the purposes of the current investigation, we define *vicarious racism* as a person's indirect experiences with racism, resulting from racism targeted directly at one or more other persons in their environment (Harrell, 2000).

In the following sections, we provide the context for the current study. First, we discuss scholarship that underscores the endemic nature of racism in both American society and higher education. Second, we define and present the different types of racism that shape the experiences of people of color and, in doing so, we pay particular attention to the role of vicarious racism. These two sections ultimately serve as the basis of our conceptual framework. The remainder of this manuscript describes our inquiry into the ways in which vicarious racism shapes the experiences of doctoral students of color in graduate education.

### **Racism in education**

Racism can be defined as:

a system of dominance, power, and privilege based on racial-group designations; rooted in the historical oppression of a group defined or perceived by dominant-group members as inferior, deviant, or undesirable; and occurring in circumstances where members of the dominant group create or accept their societal privilege by maintaining structures, ideology, values, and behavior that have the intent or effect of leaving non-dominant-group members relatively excluded from power, esteem, status, and/or equal access to societal resources. (Harrell, 2000, p. 43)

Many educational researchers have examined how racism shapes experiences within education (Harper, Patton, & Wooden, 2009; Ladson-Billings & Tate, 1995; Museus, Ravello, & Vega, 2012; Solórzano, Ceja, & Yosso, 2000; Truong & Museus, 2012; Yosso, Smith, Ceja, & Solórzano, 2009). Some of these scholars have critically analyzed how educational policies and institutional practices function to contribute to the oppression of communities of color. For example, researchers have illuminated how ostensibly progressive legislation and policies, such as The Civil Rights Act (1964) and affirmative action, have failed to adequately redress racial inequalities, while there seems to have been an unanticipated deepening of racial inequities in the criminal justice and educational systems (Alexander, 2010). Other scholars have highlighted their own experiences with race and racism within the academy (Griffin, Ward, & Phillips, 2014; Rollock, 2011).

In addition, scholars have begun to uncover the ways in which racism permeates postsecondary educational institutions (Griffin et al., 2014; Museus et al., 2012; Solórzano et al., 2000; Truong & Museus, 2012; Yosso et al., 2009). For example, Solórzano et al. utilized qualitative methods to analyze the experiences of African American and Latino undergraduates and found that they regularly experienced hostile racial climates and racial prejudice and discrimination. Moreover, the findings of these studies are consistent with a large and growing body of literature that highlights the racialized experiences of undergraduates of color (Cabrera, Nora, Terenzini, Pascarella, & Hagedorn, 1999; Feagin, 1992; Feagin et al., 1996; Harper & Hurtado,

2007; Hurtado, 1992; Lewis, Chesler, & Forman, 2000; Museus, Nichols, & Lambert, 2008; Museus & Truong, 2009; Nora & Cabrera, 1996).

For example, Harper and Hurtado (2007) conducted a comprehensive literature review of the previous 15 years of research on campus racial climate. All but one of the empirical studies they found on campus racial climate focused on undergraduate students. They found that research on campus climate focused on the following three areas: students' differential accounts of campus racial climates by race, students of color reports of prejudice and racism on campuses, and benefits of cross-racial interactions. The researchers also conducted a qualitative study on campus climate at five large, predominantly White institutions across the country. Harper and Hurtado convened focus groups with 278 Asian American, Black, Latino, Native American, and White students. They presented nine themes from their analysis of the focus group data: (1) lack of institutional commitment on diversity issues; (2) race was a taboo topic to discuss; (3) students self-segregated themselves based on race; (4) different levels of satisfaction with college experience based on race; (5) institutions had poor reputations for how they dealt with racism and diversity issues; (6) White students' overestimation of minority students' satisfaction with their college experiences and institution; (7) lack of diversity in most curricula, activities, and spaces on campus; (8) minority administrators' awareness of racial inequalities on campus, but lack of action for fear of losing their jobs; and (9) institutions had never used their own research capacity to conduct campus racial climate assessments on their campuses.

There is also a small and growing body of literature that focuses on the racialized experiences of graduate students of color in particular (Gay, 2004; Gildersleeve, Croom, & Vasquez, 2011; Solem, Lee, & Schlemper, 2009; Solórzano, 1998; Truong & Museus, 2012). This body of research has begun to shed light on the ways in which many graduate students of color experience types of racism similar to their undergraduate counterparts, including underrepresentation in graduate programs, cultural mismatch between the worldviews of students of color and those represented in the curricula, stereotypes of their intellectual inferiority, lack of access to faculty mentors who share their ethnic backgrounds, and limited engagement from faculty mentors in meaningful and substantive intellectual activities. Gay (2004) described the process of marginalization by which there is an absence of "goodness-of-fit issues between the needs, interests and skills of students of color, and institutional priorities and protocols" (p. 267). Such material dissonance creates an environment where students of color feel like "Guests in Someone Else's House" (Turner, 1994). Solórzano (1998) conducted a qualitative study with 22 Chicana and 44 Chicano Ford Foundation Minority Scholars about their experiences with race and gender microaggressions. He found that such out-of-placeness and low faculty expectations were not simply due to graduate students' ethnicities, but were further compounded by their gender, class, and language statuses. One participant in his study shared how being a woman in a male-dominated field further led to her intellectual isolation as male colleagues objectified her presence. Finally, Solem et al. (2009) examined departmental climate and graduate students' experiences in geography programs. They conducted focus group interviews with 28 participants and surveyed 605 graduate students. Responses from their survey showed that students of color felt isolated and perceived their departments to be "less tolerant, equitable, and diverse" compared to Whites (p. 281). Students of color were also more likely than White students to report that their department was not collegial and should be more supportive of efforts to enhance the structural diversity within their departments by increasing the number of students, faculty, and administrators of color.

Multiple studies shed light on the psychological consequences and responses that result from encounters with racism among doctoral students of color. Gildersleeve et al. (2011) examined the experiences of 22 Black and Latino doctoral students at three different institutions. In their study, racism led to students of color self-censoring, accumulating self-doubt, and feeling forced to create supportive peer networks to help negotiate their racist experiences. Truong and Museus (2012) conducted semi-structured interviews with 26 participants who experienced racism and racial trauma in doctoral study. They presented a taxonomy of how doctoral students of color cope and respond to racism in their programs. Participants reported using a variety of approaches to maintain their well-being and negotiate relationships within their programs, such as utilizing support networks, avoiding racist environments, transferring out of their programs, seeking interventions, and documenting and filing complaints.

While the aforementioned studies are important, none of them focus explicitly on analyzing the ways in which vicarious racism shapes doctoral experiences. As such, our present study seeks to extend these previous investigations by specifically examining secondhand racism in the experiences of doctoral students of color. In the next section, we operationalize and discuss evidence of the existence of vicarious racism to contextualize the current examination.

### **Vicarious racism**

Research also indicates that people of color experience racism either indirectly or vicariously via other people in their environment. Building on previous scholarship (Alvarez, Juang, & Liang, 2006; Browne Graves, 1999; Harrell, 2000; Dominguez, Dunkel-Schetter, Glynn, Hobel, & Sandman, 2008; Nuru-Jeter et al., 2009), we use *vicarious racism* and *secondhand racism* synonymously to refer to cases in which people of color indirectly experience racism that is targeted at other persons of color in their environment. People of color can experience racism vicariously via the encounters of family members, friends, community members, or strangers. When individuals experience secondhand racism, they can come to the realization that they are also vulnerable to the racism that they have vicariously experienced, and they can encounter harmful emotional, psychological, or physiological consequences as a result of these experiences. One outcome of the current analysis is the illumination of the types of vicarious racism experienced by students of color in doctoral education and ways that they cope with this secondhand racism.

Harrell (2000) stated that one of the six ways people of color experience racism-related stress is through vicarious racism experiences. Harrell argued that it is imperative for individuals to understand vicarious racism as it is one way that racism manifests itself. Vicariously experiencing racism through observing or learning about how family members and friends experience racist acts can also directly affect individual psychological and emotional well being. In addition, people may also suffer from observing racism that strangers experience.

Several scholars have conducted studies of race and racism and underscored instances in which people of color observe or learn about other people's racist encounters (e.g. Du Bois, 1903; Essed, 1991; Feagin et al., 1996; Tatum, 1987), but few studies focus on systematically analyzing such vicarious racism. An extensive review of literature reveals only four studies that specifically focus on examining secondhand racism (Alvarez et al., 2006; Dominguez et al., 2008; Jackson, Phillips, Hogue, & Curry-Owens, 2001; Nuru-Jeter et al., 2009). These inquiries reveal a few

important realities about the nature and effects of secondhand racism. First and foremost, there is some indication that many students of color might indeed experience vicarious forms of racism. For example, Alvarez et al. (2006) quantitatively analyzed the experiences of 254 Asian American participants with racism, and reported that secondhand racism was the most common form of racism among this sample. In fact, 99% of participants in this inquiry reported at least one experience with vicarious racism in the five years prior to the study, while 90% of the students experienced racism directed at them.

Second, existing evidence suggests that vicarious racism might be a stressor. Indeed, multiple examinations reveal that African American women report that the secondhand racism that they experienced was a stressor (Dominguez et al., 2008; Jackson et al., 2001; Nuru-Jeter et al., 2009). These inquiries indicate that, as children, African American women often observe racist incidents or their parents tell them about their experiences with racism (Dominguez et al., 2008). These studies also suggest that African American mothers report severe stress as a result of observing their children experience racism and thinking about how their children would experience racism in the future (Nuru-Jeter et al., 2009).

Third, research on policing indicates that people of color who experience vicarious racism seek support and, in doing so, can exacerbate the negative effects of this secondhand racism (Brunson, 2007; Glover, 2009; Feagin & Sikes, 1994; Weitzer & Tuch, 2004). This scholarship shows that Latino and Black individuals hold more negative perceptions of police than their White counterparts, negative vicarious racism-related experiences with police might be stressors that increase mistrust in law enforcement, and individuals who encounter racism-related police misconduct will often turn to their family and friends for support. When individuals tell their friends, family, neighbors, and others about their experiences of racism, it can create a “domino effect of anger and anguish rippling across the extended group” (Feagin & Sikes, 1994, p. 16). Put another way, there is evidence that individuals who seek support to cope with racist encounters can expose others to secondhand experiences that result in racism-related stress and trauma. However, this process has not been the focus of systematic empirical inquiry.

It is important to note two important limitations of this body of knowledge on vicarious racism. First, as mentioned above, only a few empirical inquiries focus on examining the nature and effects of secondhand racism (Alvarez et al., 2006; Dominguez et al., 2008; Jackson et al., 2001; Nuru-Jeter et al., 2009). As a result of the paucity of scholarship that systematically analyzes vicarious racism, this phenomenon is not well understood in general. Moreover, our review uncovered only one systematic analysis of secondhand racism among undergraduate students (Alvarez et al., 2006) and no empirical examinations of this phenomenon among students in graduate education. Consequently, little is known about how vicarious racism shapes the experiences of students of color in postsecondary education.

Second, many researchers who do mention vicarious racism in their work do not disaggregate it from other types of racism (Franklin-Jackson & Carter, 2007; Renae Stancil, Hertz-Picciotto, Schramm, & Watt-Morse, 2000; Seaton, 2003; Utsey, Payne, Jackson, & Jones, 2002; Utsey & Ponterotto, 1996). For example, in several existing inquiries, researchers analyze individual, institutional, and cultural racism and offer accounts of how people of color experience each of these forms of racism both directly and vicariously (Franklin-Jackson & Carter, 2007; Seaton, 2003; Utsey et al., 2002; Utsey & Ponterotto, 1996). Such analyses make it difficult to separate



the nature and effects of direct racism from those of secondhand racism and gain an in-depth understanding of the latter (Harrell, 2000).

Due to the paucity of existing literature on vicarious racism in higher education and the aforementioned complexities in studying this phenomenon, more systematic empirical inquiries of both undergraduate and graduate students' experiences with secondhand racism are warranted. The current investigation is aimed at offering such an analysis, as this phenomenon has been understudied in education and has never been applied to students in doctoral education specifically. In the next section, we discuss the purpose of this study on secondhand racism and provide the context for the current inquiry.

### **Purpose of the study**

The purpose of the current study was to understand the lived experiences of doctoral students of color with vicarious racism. One overarching research question guided the inquiry: How does vicarious/secondhand racism shape the experiences of doctoral students of color? Three sub-questions also helped guide the analysis: (1) How do doctoral students of color experience vicarious/secondhand racism? (2) How do doctoral students of color cope with vicarious/secondhand racism? And (3) how do these students make sense of the role of vicarious/secondhand racism in their experiences?

This study contributes to the existing literature in at least two ways. First, the current examination adds to the small body of empirical literature on vicarious racism and its effects on people of color in general, thereby increasing current levels of understanding regarding how vicarious race and racism shape the experiences of people of color in American society. Second, the current inquiry is the first investigation to examine the role of vicarious racism in doctoral education and, therefore, adds to existing levels of knowledge of the racialized experiences of doctoral students of color in higher education. We specifically chose the doctoral student population as they have successfully navigated numerous years of schooling and may have had frequent experiences with racism and coping with these incidents (Cheng, 2003). As such, they may be in a position to better articulate the nuances of their racist encounters and how they cope and respond to racism (Brondolo, Brady ver Halen, Pencille, Beatty, & Contrada, 2009; Cheng, 2003). In addition, because doctoral students of color tend to be the only one or one of a few students of color in their program, they often feel physically and intellectually isolated from others (Gay, 2004; Gildersleeve et al., 2011). We were interested in examining whether and how vicarious racism shapes their graduate experiences.

### **Methods**

We used qualitative research methods to conduct the current investigation. Qualitative techniques are ideal for generating rich descriptions and gaining in-depth understandings of existing phenomena (Creswell, 2012; Patton, 2002). Specifically, the phenomenological tradition examines the lived experiences of individuals as they relate to the phenomenon under investigation (Creswell, 2012; Moustakas, 1994). Therefore, we deemed phenomenological methods ideal for this empirical inquiry because we sought to understand the lived experiences of our doctoral student of color participants with vicarious racism in their respective graduate programs. More

specifically, an empirical transcendental phenomenological approach (Moustakas, 1994) was employed as it centralizes participants' insights, rather than researchers' interpretations as is typical in more hermeneutical approaches (Creswell, 2012). This is consistent with our belief that doctoral students of color are much more knowledgeable about their lived experiences than researchers and are critically engaged in making sense of those lived experiences.

### ***Participant selection***

As part of a larger study on the racialized experiences of doctoral students of color, we recruited participants by distributing a questionnaire widely over the Internet (i.e. via e-mail and Facebook). The larger study focused on how doctoral students of color experienced racism and racial trauma as well as how they negotiated the political complexities of racist encounters. While the larger study described different ways in which doctoral students of color experienced racism, the current analysis focuses specifically on their experiences with vicarious racism. Three hundred and sixty prospective participants completed the online questionnaire. The questionnaire consisted of questions relating to prospective participants' race, year in their doctoral program, if they experienced racism in their programs, and if they experienced racial trauma while enrolled in their programs. Because recruitment efforts occurred via the Internet on various listservs, Facebook groups, and other types of online communications through email forwarding, it is unknown how many prospective participants received the online questionnaire. Of those who completed the questionnaire, a subset of individuals was invited to take part in the study based on three criteria. First, the students must have been enrolled in doctoral programs and have completed at least one year of course work in their respective programs or have graduated within the past three years. Second, participants must have self-identified as belonging to a racial or ethnic minority group (e.g. Asian American, Black, Latino, Native American, and Pacific Islander) and be American citizens or permanent residents. Third, to be eligible for participation, students must have agreed that they experienced racism and racial trauma during doctoral study.

We selected participants based on the criteria described above. We were not interested in whether participants attended public or private programs, those in urban, suburban, or rural areas, or even focusing on specific programs. Because this topic has been relatively unexplored, we wanted to include participants in the study who attended a diverse range of institutions.

### ***Description of participants***

The final sample consisted of 26 participants. Of those 26 participants, 20 were doctoral students of color and 6 were recent doctoral graduates of color. The sample included participants who had majored or were majoring in, anthropology biomedical science, biostatistics, business, communications, education, history, psychology, public health, sociology, social work and social welfare, and women's studies. Students enrolled in doctoral programs at the time of the interviews had completed between 1 and 6 years of doctoral study; the mean number of years completed was 3.15; self-reported grade point averages ranged from 3.3 to 4.0, with a mean of 3.7; and participants ranged in age from 26 to 63 years. Seventeen participants were women and nine were men. Three participants self-identified as Asian American,

and more specifically Korean, Chinese, and Vietnamese American; 11 as African American or Black; 2 as Chicana; 4 as Mexican American; 5 as multiracial; and 1 as Native American.

At the time of the interviews, of the 26 participants, 10 were affiliated with private institutions and 16 were affiliated with public institutions. A total of 21 different institutions are represented in the sample. Based on Carnegie Classifications (2010), 18 of the 21 institutions were large in size, while 1 was small and 1 was medium size. A majority of the institutions were research universities, with 13 in the “very high research activity” and 4 in the “high research activity” categories (Carnegie Classifications, 2010). A total of 16 of these institutions were located in cities, 2 in rural areas, and 3 in suburbs and towns (National Center for Education Statistics, 2010). They represented a wide range of geographic regions, including the east coast, west coast, northwest, southwest, Midwest, south central, southeast, Mid-Atlantic, and northeast.

### ***Data collection***

The primary source of data collected in this study was from semi-structured individual interviews with all 26 participants. We utilized a semi-structured approach because it allows a conversation to develop between the researcher and participants and engages the participants in a way that helped us better understand their experiences (Glesne, 2011; Rubin & Rubin, 1995). The semi-structured interview protocol consisted of several topics related to the experiences of doctoral students of color, including participants’ academic aspirations and experiences, campus and departmental climate, personal experiences with racism, experiences with racism in doctoral study, and how racist encounters affected them. The interviews lasted between one and four hours each, but most were approximately two hours long. These interviews provided rich data regarding students’ experiences with racism in general and vicarious racism in particular in their programs. In addition, participants offered valuable insights into how they were able to respond to racist situations. Each interview was audio-recorded and transcribed. We used the NVivo<sup>®</sup> Qualitative Software Research Package to organize, code, and analyze all interview transcripts.

### ***Data analysis***

Throughout the data analysis phase, we used methods suggested by Moustakas (1994). We read each of the 26 interview transcripts to gain a sense of what students’ narratives were conveying. We read the transcripts a second time and, following bracketing procedures prescribed by Ashworth (2010) and Moustakas (1994), reflected on our own experiences, assumptions, and biases as they applied to the data analysis so that we could capture the essence of the phenomenon of secondhand racism. Essentially, we isolated our experiences with vicarious racism in doctoral study from those of participants as we viewed the participants as experts in analyzing, making sense of, and articulating their own racialized experiences (Ashworth, 2010; Moustakas, 1994). During the third reading of each transcript, we constructed codes to highlight significant quotes and statements that participants made as they related to their lived experiences as doctoral students of color. We then organized these codes into thematic categories, which generated a deeper understanding of the essences of the phenomena. We drafted structural descriptions of *what* the doctoral

students of color experienced and textural descriptions of *how* the doctoral students experienced secondhand racism, as well as how they navigated through these racist encounters. The textual and structural descriptions, along with the thematic categories, guided the presentation of the findings.

### ***Trustworthiness and quality assurance***

We employed Lincoln and Guba's (1986) framework for ensuring credibility, transferability, dependability, and confirmability of findings. We conducted member checks, convened a peer debriefing team, created an audit trail, and held follow-up interviews with participants. Member checks were conducted to confirm the accuracy of interview transcripts before the data analysis. In addition, we shared the analyses of participants' lived experiences with them and invited feedback. When data needed clarification or additional information, we conducted follow-up interviews. We convened a peer debriefing team consisting of people who study race issues and qualitative research methods to provide feedback on interpretations of the data. The seven members of the peer debriefing team were three faculty members, two doctoral students, and two educators interested in pursuing doctoral studies. These educators possessed master's degrees and had completed course work in qualitative methods and race.

### **Limitations**

This study has several important limitations, and we discuss three major interconnected limitations herein. Our sample was limited to domestic doctoral students of color, and we acknowledge that international doctoral students of color may have very different racialized experiences than those of US-born or naturalized doctoral students of color because they have not yet been socialized into the racialized context in which they currently live in the United States. A second limitation of the current study is selection bias. We interviewed doctoral students who self-identified as having experienced racism and racial trauma in graduate education and were willing to discuss their racialized experiences in higher education. However, there may be other doctoral students of color who did not receive or respond to the recruitment solicitations, but who could have shared different valuable insights into such experiences.

### **Role of the researchers**

It is important to consider the role of the researchers in all forms of inquiry, but particularly so in qualitative research in which the researcher serves as the primary data collection instrument (Patton, 2002). In this study, our background knowledge of higher education, qualitative research, and race and racism in postsecondary education, as well as our personal experiences with racist encounters, informed the study. As former doctoral students of color who experienced racism vicariously, we believe that such racism might shape students' doctoral experience. As researchers who study race, we also believe that the voices of students of color are critical to understanding how race and racism function in society (Chon, 1995; Delgado, 1989). Thus, our collective professional and personal knowledge informed the design of the study, the interview protocol, the process of conducting interviews, analysis and

interpretation of the data, and presentation of the findings. In this way, our past experiences and positionalities served as resources rather than liabilities.

Although we believe that our insights about racism were useful in executing the study, we sought to represent students' experiences as authentically as possible. To this end, throughout the study, we maintained awareness of our own assumptions by bracketing our own experiences (Ashworth, 2010; Moustakas, 1994). The purpose of bracketing was not to achieve some form of objectivity, but rather to prevent our own experiences from misrepresenting participants' voices. We believed that the participants were experts in navigating their own racialized experiences in education as they had successfully done so from the pre-/kindergarten through doctoral study. In this way, we were able to disclose our own personal experiences and perceptions of racism and trauma while employing the empirical transcendental phenomenological approach to the study.

## Findings

Our data analysis revealed four thematic categories that describe how vicarious racism shaped the experiences of our participants in their doctoral programs. The first two themes describe two different types of secondhand racism experienced by participants, while the remaining two themes illuminate participants' coping responses to the vicarious racism that they experienced. First, *observed racism* refers to instances in which participants experienced vicarious racism by hearing stories about or seeing racism directed at faculty and peers, which invoked negative emotional and psychological reactions from participants. Second, *trickledown racism* refers to cases in which participants were structurally affected by racism directed at their faculty mentors of color and which resulted in negative consequences for participants (e.g. the departure of a faculty advisor and the diminution of support for these doctoral students). Observed and trickle-down racism sometimes occurred simultaneously, as participants observed racism targeted at others and experienced the structural trickle-down effects of it. Third, the *normalization of racism* describes the process by which learning about secondhand racism led doctoral students to the realization that racism is a normal aspect of their graduate education programs. Finally, *racial resistance* refers to cases in which vicarious racism resulted in participants' collective mobilization to combat racism. The themes were presented in this way as the literature review informed us that vicarious racism manifests in complex ways, both as a stressor as well as a way of coping with racism (Alvarez et al., 2006; Browne Graves, 1999; Brunson, 2007; Dominguez et al., 2008; Feagin & Sikes, 1994; Glover, 2009; Harrell, 2000; Jackson et al., 2001; Nuru-Jeter et al., 2009; Weitzer & Tuch, 2004). We wanted to capture the process by which vicarious racism functions from one end of this spectrum to the other while also demonstrating how this occurs within doctoral programs. Before moving forward, it is important to note that only two participants did not experience secondhand racism, which could be a result of the fact that they were the lone students of color in their doctoral programs.

### *Observed racism*

All of the participants who reported experiencing vicarious racism in the current study observed racism. This occurred when students visually witnessed racist acts directed at people of color in their network or learned about such racism via

storytelling. Participants in the current study discussed observing racism experienced by peers and faculty of color in their graduate programs, and this theme consisted of two elements. First, participants discussed their *visual observations* of their peers and faculty members' experiences with racism. Second, these participants also discussed *hearing stories* of racism experienced by their peers and faculty of color in their respective doctoral programs.

Indeed, several participants discussed visually observing peers and faculty of color experience racism directly. For example, in the following remarks, an African American male participant recounted witnessing an exchange between the chair of his department and the only Black faculty member in his department when he began his doctoral program:

My first time meeting him, he and the Chair of the doctoral program got in a shouting match in a class. And, she pretty much just said he was an "idiot" and his research was "worthless" even though he has more publications than anybody in the department and had written several books.

Bearing witness to the faculty member of color experiencing such degrading and dehumanizing insults on his intelligence communicated to doctoral students that faculty were not immune to racism despite having attained a place in the professoriate. The participant discussed how he had conversations with the Black professor and has observed the daily struggles he had within the hostile department:

It's really tragic. He's someone that should be celebrated for his accomplishments and he's really kind of pushed to the background. I had a conversation about that at a conference and he acknowledges his experience is just horrible there. But he's invested so much time and energy there he feels like he's got to stick it out and he's kind of sticking it out and pushing them to hire more people of color so that the environment is not as hostile for students of color. He's trying to hang in there and do his part. But I don't know how long he's going to last there.

In addition to visually observing racist encounters, participants discussed observing racism in their doctoral programs via other people's stories. A multiracial participant, for example, described hearing a story about how the Chair of her department degraded a Native American student in public when this student expressed her concerns about the racial and cultural bias in the curriculum:

[She] went in and talked to the Chair and talked to her about the curriculum and she ended up getting yelled at by our Chair in such a manner in front of people that she cried. When we spoke, she said it was one of the most humiliating experiences ... that the Chair literally got up out of her chair and started yelling at her. The student was very upset and she didn't know if she was going to stay in the program or not ... The Chair is very aggressive towards women of color ...

Another multiracial student described hearing the struggles of an Asian American faculty member, who refused to conform to her White colleagues' paternalistic and "exoticized" expectations of her to be "docile":

She was very well respected in her field, had made quite a name for herself, and she was very accomplished. She was tenured faculty. The way I understand it is directly from being in relationship with her, when they hired her they made some assumptions. They exoticized her; kind of fetishized her body and they exoticized her and thought that she was kind of this docile Asian woman. It fit very neatly into the ways in which the White males at that time wanted to paternalize the dynamics. It turned out that she was this fiercely strong and bold and brilliant woman who had a voice and had agency. That was very disappointing, as the story goes; I wasn't there. But as the story goes

that was very disappointing to the faculty, the White male faculty in the department. As a result, there was some tension here and there between opposing worldviews and opposing politics.

Ultimately, the participant shared that the Asian American faculty member left her program because her spirit was broken from dealing with racism in her department. The participant stated about her advisor:

She started to look elsewhere for where her services would be valued. She's one of the top scholars internationally in our field. They lost her and we lost her and I lost an advisor and somebody that I really looked up to and really loved.

The circulation of these narratives reinforced the potential negative consequences if students of color push back against institutionalized racism and discouraged them from engaging in such resistance.

An Asian American participant described how she heard about how a peer of color in another department had similar experiences to her in that their funding had been taken away. The participant's peer entered the program with guaranteed tuition costs and a stipend for three years, but after she enrolled, her funding was retracted and she was told she had to find her own financial support. After this student of color was able to acquire a prestigious pre-doctoral fellowship for minority students from the National Institutes of Health, however, the former advisor suddenly took special interest in her:

The advisor was promoting her in front of other colleagues when in fact the advisor in the beginning actually threw her on her own and said, "You have to fend for yourself." The advisor actually did not give her any support as to how you even go about writing a [fellowship funding proposal] or how you would even support yourself. So, basically, because this doctoral student was so successful in getting a peer reviewed funded fellowship, the advisor actually turned around and took credit for her success and basically showed interest now, a vested interest now in her development as a graduate student. For me, it felt maybe not very genuine or not very sincere and sort of exploiting her and her situation at the same time ... doctoral students of color when they get a prestigious fellowship like that and having their advisor who is from the majority culture automatically taking credit for their achievements without mentoring them or guiding them along the way ...

Beyond observing racism through storytelling as it relates to out-of-classroom experiences, one participant shared how they learned of in-classroom racist experiences colleagues of color encountered. For example, a Chicana doctoral student shared how she was told a story of a student making a comment in class referring to Latino students as "illegal aliens." Beyond the statement in and of itself being troubling, the professor's silence reinforced the student's sense of isolation. The same student shared a story of a racist experience her friend shared with her:

... she was packing up her things to leave for home after one of the classes had ended [and] her professor told her that she was not to ever speak Spanish in his class again. She turned around and said class is over. I was just speaking to [my friend] about what we were going to do after class to study together. The professor said I don't care what you were talking about or for what. In my class you're not to speak Spanish again.

Although these students went to school in a state where Spanish was an officially recognized language, the professor did not allow students to speak Spanish in the classroom. What is further striking about such policing of language is that it extended beyond formal conversation during class. Faculty pedagogies of silence and silencing, respectively, rendered the classroom an already unsafe space.

These quotations illuminate how participants were exposed to stories about their peers and faculty of color encountering and navigating racism within their graduate programs. These vicarious experiences with racism had negative emotional and psychological effects on participants, such as inducing frustration and anger.

### ***Trickledown racism***

We use trickledown racism to refer to cases in which participants reported that racism directed at faculty members of color structurally limited their opportunities and negatively affected their experiences in graduate school. Trickledown racism is distinct from observed racism. While observed racism primarily affected participants via its negative emotional and psychological consequences, trickledown racism impacted participants by limiting the levels of support in their environment. Trickledown racism manifested in two key ways. First, participants discussed how the racism that their faculty of color experienced resulted in *decreased mentoring and support* for them. Second, participants discussed how racism directed at faculty led to the *complete eradication of mentoring and support* through faculty mentors' departure. In some cases, participants felt that they experienced racism directly as a result of their advisors leaving their institutions. This theme explains how racism that is targeted at people in the environment of doctoral students of color can not only lead to these students observing racism and suffering psychological consequences from these observations, but can also shape the conditions that they must navigate (e.g. availability of support structures) as they advance in their programs.

Regarding the first type of trickledown racism, participants discussed how they experienced decreased mentoring and support because their advisors of color were so busy investing their energy in navigating the racism within their departments. For instance, one Black male participant discussed how the racism directed at his advisor led to a reduced level of support to develop his research skills and agenda. This student expressed the following:

My friend and I really don't get an opportunity to publish in our doctoral programs. I would argue that it is because of many of the things that [my advisor] experienced as an African American male faculty member. He has to deal with the racism in his life, the racism in higher education, and the constant racist issues that affect the department that he teaches in. As a result of the things he deals with, he often times doesn't have time to interface with his advisees.

The student had mentioned one racist incident his advisor experienced related to tenure. He was recruited from another institution and hired because of his exemplary scholarship. He was the first African American male tenure-track faculty member hired in his department. While considering taking the position and early on after his arrival at the institution, he was assured that his research was exceptional and that his colleagues would support his early bid for tenure. However, his colleagues changed their minds:

My new advisor did not go up for tenure, and that situation was so racist. At first, he was told from his colleagues that they would stand with him, but they later came back to say that he wasn't ready to go up for tenure ... At first, my former advisor [White female] told my new advisor that his scholarship was quality, and then she told him his scholarship wasn't quality. So, this confused him in some ways. He in turn, had to think about ways to interact with his advisees (i.e. me). The relationship he had with me somewhat suffered because he had to deal with her and the other faculty in our



department who discouraged him for going up for tenure, which is something every faculty member desires.

This quotation underscores how faculty mentors' preoccupation with combating the racism that they experienced indirectly translated into less time for faculty to spend mentoring and supporting participants, which was ultimately associated with decreased research skill development and reduced levels of doctoral socialization.

Participants also discussed how, in some cases, secondhand racism led to completely eradicating their access to their faculty mentors' support. Specifically, participants described how racism within their departments forced their faculty advisors to depart from their institution. Once participants' advisors left their institutions, other faculty in their departments marginalized these doctoral student participants. For example, one multiracial female participant discussed how high levels of experienced racism led her advisor, an Asian American woman, to take a job at another institution. This participant's faculty advisor was the only person in her program that she fully trusted, and this faculty mentor's departure meant that the participant had to learn to navigate the racism within her department while members of the department subsequently targeted her for dismissal. As this participant described her experiences after her faculty mentor's departure, she discussed how the Chair of her department treated her in the classroom in the following remarks:

In this class I learned not to really do certain things. I didn't want him to see me. I tried to be invisible so that I could get through. He would do a lot of things to encourage me to quit ... He would try to convince me that I wasn't good enough to be in this program and that I should quit the class. We would have these interactions frequently where he would say things like, "You know you can quit. You can always come back some other time if it's too much for you to handle."

Similarly, another multiracial participant discussed how her advisor protected her from having to experience the hostile departmental climate, but ultimately left her institution. After her advisor's departure, faculty targeted the student directly by taking away her funding, calling her home to insist she quit doctoral studies, and refusing to serve as her advisor. She described how, since her advisor left, the faculty tormented her to the point where she experienced racial trauma:

I went from having a very healthy experience when my advisor was there to ending up with symptoms like insomnia, high blood pressure, weight gain, back problems, headaches and I think probably for me the worst one is I never used to get panic attacks or anxiety attacks. I get anxiety attacks and panic attacks now.

As this quotation illustrates, sometimes the racism that participants experienced after their faculty mentor's departure led to severe negative consequences. Indeed, this participant reported that her experienced racism in her doctoral program led to her being diagnosed with severe depression. She became protected under the [Americans with Disabilities Act of 1990](#), but her department's chair continued to treat her inappropriately by calling her home to tell her to quit the program, yelling at her in meetings, telling other faculty not to serve on her committee, and filing a false complaint about her to the unemployment office.

### *Normalization of racism*

Vicarious racism also led to the normalization of racism among participants. The normalization of racism refers to the process by which participants came to the

realization that racism is a normal and pervasive aspect of their doctoral education. First, the doctoral students of color reported noticing *patterns of racism* throughout their academic departments. Second, participants discussed how they went through the process of *externalization* in which these observations of patterns of racism led to increasing realizations that the source of their racial problems was not themselves, but was instead the normal and pervasive nature of racism that permeated their graduate school environments. This theme illuminates one critical response to secondhand racism among doctoral students of color – a process through which doctoral students make sense of the vicarious racism that they experienced, learn that racism permeates their environment, and develop a foundation for dealing with it.

Regarding the first element of the normalization theme, participants discussed how they interacted with their peers of color to share stories of racial isolation, devaluing research focused on race, racial microaggressions, and differential treatment. Through this sharing process, participants were able to establish that their experiences were not unique encounters, but elements of larger patterns of systemic racism in their doctoral programs. One African American male participant illustrates this process in the following comments:

I think knowing about other people's experiences sort of gives you a context ... and lets you know it's more systemic than it is just you. So, it's bigger than you. So, at first I think I thought of things as my process was "What did I do wrong? What am I doing?" ... Then, once I started to see that there were other people going through the same thing it turned into "Oh, now I know that I don't have a problem." It's "What's going on with this institution? What's going on here?"

Participants expressed how knowing about other people's experiences led them to feel mistrust for those in power within their departments. They also described how, in some cases, learning about other people's experiences with racism contributed to increased anger, depression, severe racism-related stress, and despair. For example, one multiracial male participant expressed how secondhand racism and the realization that racism was a normal and pervasive aspect of graduate education induced several emotions, such as feelings of helplessness:

It pisses me off ... It's kind of sad because I just expect it now. So, I'll get an email and I'll write back like, "Yes. That happened to me too." Or, like, "Yes. Here's how you deal with this bullshit" ... It pisses me off that it's still happening. It shows me what to expect for the rest of my career in academia. It makes me sad that it's not really going to change any time soon. It makes me also sad that one thing that happens I think to graduate students is that there's so much pressure to establish yourself as an individual that collective strategies are frowned upon.

As participants went through the process of learning that their experiences were part of larger patterns of racism in their graduate programs, they also went through a process of externalization, by which they progressed from viewing their experienced racism as potentially their own fault to realizing that these racial realities stemmed from their external environment. Indeed, participants were often given messages that the racism that they experienced was their own fault and wondered whether they brought these experiences upon themselves. However, when participants experienced vicarious racism via faculty and students of color, they learned that it was their environment that imposed these racist experiences upon them and other people of color in their graduate programs as well. A Latino participant discussed how he vicariously experienced racist actions that helped him come to the realization that racism

was a more pervasive aspect of the academic environments that he navigated and that he was not the source of, nor responsible for causing, the race-related problems he observed:

When I hear of other students getting some of these comments and I see them getting upset, then I feel better. I feel like, “Okay, I am not just exaggerating here.” For example, if I talked to them about some of these issues that I have experienced and they get upset, I feel a little bit better that I am not crazy.

Another Black student similarly remarked how she made sense of her own experiences based on finding out that at least two others had issues within her department and filed complaints. She stated, “That kind of helped reiterate the fact that I wasn’t crazy, and I wasn’t imagining crazy things happening, nor was I the cause, the one to blame for their actions.” These participants highlight how students’ experiences with vicarious racism led them to externalize the source of their racism-related challenges in graduate school.

### ***Racial resistance***

Finally, participants discussed engaging in racial resistance in response to the vicarious racism that they experienced through *constructing and utilizing support networks* and *collective peer advocacy*. This theme describes another critical response to vicarious racism among doctoral students of color and underscores how these students mobilized to cope with the vicarious racism within their doctoral programs. The theme highlights the importance of networks of collective advocacy and the agency held by students of color in doctoral programs.

Regarding the creation and utilization of support networks, secondhand racism led participants to develop communities of support, including founding student organizations and pairing up with peers of color to provide support for one another. One Chicana participant, for example, described how her advisor created a space for students to collectively discuss their racialized experiences. She stated that:

the space I think my advisor created also helped you cope, because here, not only can I bring in the frustration that I’m feeling but we can theorize it. We can talk about it. We can cope all together, strategize even, against it in some ways.

Similarly, other participants described how they participated in or started their own organizations to provide support networks for themselves and their peers. One Black participant described how Black students on her campus started organizing because they felt oppressed in their doctoral programs and their faculty and administrators did not pay attention to or address these issues. She stated the following:

One student was just having such a hard time with her boss and her lab mates, she would actually try to talk to her boss about what was happening to her and she was just really getting nowhere. And then one day after fighting with someone in her lab, she found a noose on her bench, and she took it to the graduate school, she took it to her boss. Nobody cared ...

Because this student and other students were not getting the support they needed in graduate school, this participant founded the Black Graduate Students Association at her institution. It became a counterspace where Black students could connect, discuss the issues they were experiencing, and provided support for each other.

These student groups also gave participants a vehicle to advocate for themselves and their peers. When they heard stories about racial injustice, many of them

organized to bring their concerns to the faculty and administrators at their institution. When the administration disbanded a Black male group, one Black male participant described how the group mobilized a town hall meeting to discuss their concern about the dissolution of the student group with the Vice President for Student Affairs. He was also a student representative on the Senate, so he spoke up about this issue during a Senate meeting where the faculty and administrators were present.

While being a member of a formal graduate student group made it easier to organize against racial injustice, some participants described how they appealed to their informal support network to advocate for peers. A Latina participant discussed how the faculty mishandled a situation involving one of her Asian international peers in the graduate school who had a difficult time adjusting to the doctoral program, had a breakdown, and attempted suicide. Instead of providing support for the Asian student, the faculty made the decision to dismiss her from the program. Granting leaves of absences to White students was an accepted practice in the program, and the Latina student was outraged that the department decided to kick the Asian international student out of the program instead of giving her an excused leave of absence. The Latina participant, along with her peers, brought up issues of fairness to the faculty and administrators. The faculty and administrators warned her about being labeled a troublemaker and risking being ostracized from the program:

That would not have happened if she was a White student ... I was outraged, and so I talked with other students of color who also knew her. We got together and we, as a group, kind of wrote a letter to the Director and to the Dean. We basically said we think this is injustice and as a group we did it. They did. We won, I guess, because they did agree to give her a leave of absence as opposed to kicking her out of the program. But it was an effort. It took a group effort to do that. Then later I was advised not to do that because I was the one that initiated it. So they saw me as the troublemaker. I was later advised by a different faculty that, you know you can't be doing those types of things. That's going to get you into trouble and you need to be, you need to shut up basically is what they were telling me. I did get talked to about it even though it worked out for her.

This participant's experiences illustrate how, in some cases, experiencing vicarious racism and subsequently advocating for their peers led to these participants becoming the direct target of racism within their doctoral programs.

## **Discussion**

At least six major conclusions can be drawn from the preceding analysis. First, our data suggest that secondhand racism does, in part, shape the experiences of doctoral students of color. While previous studies have underscored that people of color experience secondhand racism on a regular basis (Alvarez et al., 2006; Dominguez et al., 2008; Jackson et al., 2001; Nuru-Jeter et al., 2009), none of these inquiries focused on experiences within graduate education and our examination adds to this literature by illustrating how vicarious racism shapes the experiences of doctoral students in higher education.

Second, the current findings suggest that experiences with racism vicariously, through visual observations and storytelling, might be important catalysts for people of color to develop more sophisticated understandings of the systemic nature of racism. Indeed, while many scholars have discussed the endemic nature of racism

(e.g. Bell, 1991–1992, 1992; Delgado & Stefancic, 2001), our findings add to this existing literature by demonstrating that vicarious racism can contribute to doctoral students of color realizing that racism is not an individual problem, but is a systemic problem that permeates society and, in some cases, their graduate programs. Such realizations can allow doctoral students of color to better gauge their situations and figure out how to utilize coping strategies to effectively navigate them, such as constructing faculty and peer networks for support and to serve as a vehicle for advocacy.

Third, the findings indicate that, while seeking social support and collective advocacy can be critical tools for doctoral students of color to utilize in coping with racism, it might also lead to those students experiencing increased racism in their graduate education. Indeed, previous research provides some indication that seeking and constructing networks of support can lead to negative consequences, such as increased levels of racism-related stress (e.g. Utsey, Ponterotto, Reynolds, & Cancelli, 2000). The current examination adds to this body of knowledge by showing how, when support networks are used as a tool for advocacy, they can lead to members of these networks becoming the direct targets of racism within higher education settings.

Fourth, the current inquiry reinforces and extends findings from previous studies on the racialized experiences of graduate students of color (Gay, 2004; Gildersleeve et al., 2011; Solórzano, 1998; Truong & Museus, 2012). Specifically, our findings are consistent with how previous studies characterized student of color experiences in graduate programs, including the pervasiveness of racism, intellectual isolation, and circumvented faculty support as evidenced in access to mentorship and funding. However, our focus on vicarious racism contributes to this scholarship. For example, some studies (Gay, 2004; Gildersleeve et al., 2011; Solórzano, 1998) have found that students experienced intellectual isolation as a result of faculty members guiding them away from particular research topics, low faculty expectations, and peers' unwillingness to engage them in substantive conversations around racism. Our findings extend that research by illuminating how doctoral students of color can also experience intellectual isolation as a result of racism directed at their faculty advisors. In this way, our findings demonstrate how isolation is relational and cumulative.

Lastly, our discussion of the normalization of racism and racial resistance supports Gildersleeve et al.'s (2011) finding that doctoral students of color encounters with racism may cause these students to collectively organize support and advocacy networks. Beyond giving students a stronger political voice, such groups provide students with an opportunity to depersonalize their racialized experience, gain a deeper understanding of how racism works in their department, and support one another through graduation. Yet, our findings complicate this ostensibly positive outcome by acknowledging how these very sources of support can potentially reproduce racial trauma in the retelling of stories.

### **Implications for research and practice**

The findings from the current investigation have several implications for research and practice. With regard to recommendations for research, scholars should make efforts to study the ways that vicarious racism shapes the lives of other people of

color in higher education, including undergraduates, faculty, and administrators of color. Indeed, with few exceptions (e.g. Alvarez et al., 2006), scholars have not systematically examined the ways that secondhand racism operates in postsecondary education contexts. For example, scholars may seek to understand how vicarious racism informs institutional recruitment efforts at the undergraduate and graduate level, by investigating how certain stories of students of color racialized experiences at a particular institution are circulated to potential applicants. While the current inquiry sheds light on this phenomenon in the context of doctoral education, more research is needed to understand how people experience vicarious racism in other spheres of higher education.

Second, scholars should make efforts to examine how the racial identity of doctoral students of color shapes their experiences with vicarious racism. Existing literature on coping with racism suggests that racial identity may play an important role in how people of color experience and respond to racism and racism-related stress (Brondolo et al., 2009; Stevenson, 2003). Therefore, a study that focuses on how vicarious racism interacts with racial identity to shape the experiences of doctoral students of color may be especially informative. This study would be particularly telling based on how students interpret vicarious racism, whether as a complex system that takes into account its role as a catalyst for racial resistance or as simply a stressor, and their coping strategies.

Our third recommendation for future scholarship is that researchers should examine whether and how vicarious racism influences the lives of White students. By common definitions (e.g. Jones, 1997), Whites cannot experience direct racism because they possess institutional power. Because there is no conclusive evidence from our research that Whites can or cannot experience secondhand racism, we recommend that this issue be examined further.

Regarding implications for institutional policy and practice, we strongly encourage institutions to consider the implementation of comprehensive anti-racism policies. Some colleges and universities have already adopted anti-racism policies that can both function to prohibit racist behavior on campus and promote the equitable resolution of racial conflict that manifests on their campuses. Policies of this nature are necessary, but not sufficient, conditions for fostering positive and supportive environments for faculty and students of color. Indeed, our findings demonstrate that, when individuals experience racism on a college or university campus, such incidents can indirectly impact other members of the campus community through their experiencing that racism vicariously. Thus, we advocate for institutions to adopt anti-racism policies that go beyond the prohibition and resolution of racist behavior on an individual level (i.e. among those directly involved in the incident) to adopting anti-racism policies that prompt institutions to craft campus-wide racism-prevention initiatives and comprehensive responses to racist incidents on their campuses. To move in this direction, it is imperative that institutions first understand that racist incidents on their campuses contribute to larger hostile campus climates and can negatively affect many people in those environments.

In addition to adopting anti-racism policies, institutions of higher education should make intentional comprehensive and continuous efforts to create environments that discourage racism on their campuses and offer mechanisms for faculty and students of color to cope with the racism that they encounter within their institutional environments. While a discussion of all elements of such holistic and consistent institutional efforts is beyond the scope of this article, we provide a few

suggestions regarding actions that should be incorporated into such efforts. For example, institutions should provide formal, interdepartmental spaces for faculty of color and students of color to interact with and provide support for one another. Such interactions could occur over dinner or brown-bag lunches that focus on diversity issues in academia. As outlined in our *constructing and utilizing support networks* and *collective peer advocacy* findings, many participants discussed experiencing tremendous benefits through their involvement in these types of spaces and group interactions by utilizing them as critical sites for racial resistance, organizing and advocacy, and communal healing.

Our findings suggest that the participants in our study often took the initiative to create spaces that discourage racism and provide mechanisms of support to cope with the racism that they encountered. While this might not be surprising, it should not be assumed that faculty and students of color bear the primary responsibility for constructing such spaces. Rather, we assert herein that graduate schools and departments bear a responsibility to proactively support the formation of such spaces. For example, faculty members are often required to provide service to their departments by way of committee work. We suggest that departments and graduate schools also consider faculty members' involvement in groups such as those we recommend, too, as departmental service and provide funds for such efforts and include them in tenure consideration. Ultimately, such relationships between faculty and students of color could prove mutually beneficial, with each constituent group forming broader support networks to cope with, negotiate through, and strategize against racism. This would also benefit students and faculty members who do not have a critical mass of persons of color in their home departments.

Further, we recommend that the aforementioned groups are consulted regularly by administrative and faculty committees on ways to improve the educational environment as it relates to issues of racism. While doctoral students of color observed that encounters with racism were normal, it was uncommon for students to have direct and sustained access to institutional agents to whom they could direct their grievances. Rather than waiting for doctoral students of color to raise concerns about racism and racist learning environments, administrators and faculty should initiate engagement. From these interactions with students and faculty, institutional agents should implement and assess changes that would improve the campus culture. Further, we do not expect that including one student of color on one committee would yield the same results as compared to a group of individuals democratically organizing and identifying policies and practices that departments could implement to improve educational environments. Again, we emphasize this form of engagement should be consistent and proactive.

Lastly, we recommend that graduate schools partner with and employ institutions' counseling and psychological services (CAPS), which offer counseling services, psychological testing, workshops, and crisis intervention. CAPS counselors may work with students of color to provide them with support ranging from adjusting to graduate school to listening to their experiences with racism. They may also facilitate group therapy sessions. It is important for CAPS counselors to work with students through their issues as well as concentrate their attention on helping students to cope with institutional racism. When doctoral students of color make sense of their experiences along with their peers, they may feel helpless and hopeless. CAPS counselors should be aware that vicarious racism might cause some students

of color to further experience trauma and should help support them and guide them through the healing process.

### Disclosure statement

No potential conflict of interest was reported by the authors.

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# Racism And Mental Health

People of color and all those whose lives have been marginalized by those in power experience life differently from those whose lives have not been devalued. They experience overt racism and bigotry far too often, which leads to a mental health burden that is deeper than what others may face.

Racism is a mental health issue because racism causes trauma. And trauma paints a direct line to mental illnesses, which need to be taken seriously.

Past trauma is prominently mentioned as the reason that people experience serious mental health conditions today.[1] But obvious forms of racism and bigotry are just the tip of the iceberg when it comes to racial trauma.

Every day, people of color experience far more subtle traumas:

- **People who avoid them and their neighborhoods out of ignorance and fear;**
- **Banks and credit companies who won't lend them money or do so only at higher interest rates;**
- **Mass incarceration of their peers;**
- **School curricula that ignore or minimize their contributions to our shared history; and**
- **Racial profiling.**

## Types Of Racism[2]

**Racism:** A broad term describing the combination of race-based prejudice and power. Without the power differential (one person/group/institution has more power than another), “racism” is just prejudice and carries less weight and fewer consequences.

**Systemic/Structural Racism:** Systemic/Structural racism has three components: history, culture, and institutions/policy. Historical racism provides the framework for current racism. Any structure built on a foundation (history) of racism will be a racist structure. Culture, which is ever-present in our day to day lives is what allows racism to be accepted, normalized, and perpetuated. Institutions and policies make up the fundamental relationships and rules across society, which reinforces racism and give it societal legitimacy (which makes it so hard to dismantle).

**Interpersonal Racism:** Racism that happens between individual people. When individual beliefs or prejudices become actions toward others.

**Institutional Racism:** Institutional racism occurs within and between institutions. Institutional racism is discriminatory treatment, unfair policies, and inequitable opportunities and impacts, based on race, produced and perpetuated by institutions (schools, mass media, etc.). Individuals within institutions take on the power of the institution when they act in ways that advantage and disadvantage people, based on race.

**Internalized Racism:** When racism and white supremacy affect the minds of Black, Indigenous and People of Color (BIPOC) to the point where they begin to believe that they are inferior because of their own race. This can sometimes lead to “inter-racial hostility” in which BIPOC treat other BIPOC in a way that mirrors how white racists might treat them. Another way internalized racism can manifest is by BIPOC accepting and internalizing Eurocentric ideals and values.

**“Reverse Racism”:** This term is in quotes to emphasize that it’s a made-up term that shouldn’t carry any actual value. It was a term created by and for white people who want to perpetuate racism by denying their privilege in all its forms and by claiming that fighting to improve the lives of BIPOC is somehow “racist” against white people. MHA considers this term invalid because racism in any form depends on the presence of a power differential. White people have historically always fallen on the powerful side rather than the powerless side. Reverse racism is therefore impossible, as long as we live in a society that perpetuates white supremacy.

**Oppression:** The use of power (by a system/institution/group/individual) to dominate over another OR the refusal of a system/institution/group/individual who possesses this power to challenge that domination.

**Racial Trauma:** Simply, traumatization that results from experiencing racism in any of its many forms. Importantly, this doesn't have to be one major isolated event, but rather it can result from an accumulation of experiences like daily subtle acts of discrimination or microaggressions.

## Racism In Mental Health Services

**Misdiagnosis of schizophrenia:** When treating Black/African American clients, clinicians tend to overemphasize the relevance of psychotic symptoms and overlook symptoms of major depression compared to when they are treating clients with other racial or ethnic backgrounds.[3] For this reason, Black men in particular are greatly over-diagnosed with schizophrenia—they are four times more likely to be diagnosed with schizophrenia than their white male counterparts.[4] Furthermore, Black people in general are significantly more likely to be diagnosed with schizophrenia alone when a mood disorder is also present than white people. Schizophrenia is a disorder that (by definition) must be diagnosed by exclusion, meaning that the symptoms of it can't be explained by another psychiatric disorder (like a mood disorder). Therefore, the fact that Black people end up with schizophrenia diagnoses without a mood disorder diagnosis despite the clinical presence of a mood disorder means that these symptoms are being ignored, and explains in large part why the diagnosis rate of schizophrenia is so much higher in Black populations than white.[5]

**BIPOC Youth:** BIPOC youth with behavioral and mental health conditions are more likely to be directed to the juvenile justice system than to specialty care institutions compared to non-Latinx white youth. This is likely because BIPOC youth are much more likely to end up in the juvenile justice system as a result of higher rates of harsh disciplinary suspension and expulsion practices against BIPOC youth in schools compared to white youth.[6]

## Racism And Individual Mental Health

Depression is the most commonly reported condition across BIPOC.[7] Additionally, racial trauma can increase the risk of BIPOC meeting the criteria for PTSD. Importantly, stress plays a crucial role in how racism affects both physical and mental health. Stress hormones are released during stressful situations and research has shown that both the

experience of and the observation of racial discrimination is stressful for children and adults who identify as BIPOC. The frequent presence of these stress hormones can lead to physical conditions like high blood pressure and heart disease, as well as mental health conditions like depression, anxiety, and overall poor health outcomes. Discrimination is typically something that occurs frequently and as a result, creates a sustained level of stress and stress hormones in those who are the most likely to experience this discrimination (BIPOC).[8]

## Quick Stats

- Although rates of mental illness in some BIPOC populations are sometimes comparable or slightly lower than the rates in the white population, BIPOC often experience a disproportionately high burden of disability from mental disorders[9]
- Black adults are 20 percent more likely to report serious psychological distress than adult Whites.[10]
- Although rates of depression are lower in Black people (24.6 percent) and Hispanic people (19.6 percent) than in White people (34.7 percent), depression in Blacks and Hispanics is likely to be more persistent.[11]
- People who identify as being two or more races (24.9 percent) are most likely to report any mental illness within the past year than any other race/ethnic group[12]
- Native and Indigenous Americans report higher rates of post-traumatic stress disorder and alcohol dependence than any other ethnic/racial group.[13]
- Mental and behavioral health conditions are common among people in the criminal justice system, in which BIPOC are disproportionately overrepresented. Approximately 50 percent to 75 percent of youth in the juvenile justice system meet the diagnostic criteria for a mental illness.[14]
- Cultural incompetence of health care providers likely contributes to underdiagnosis and/or misdiagnosis of mental illness in BIPOC. Language differences between patient and provider, stigma of mental illness among BIPOC, and cultural presentation of symptoms are some of the many barriers to care that explain these errors in the diagnostic process.
- One study found that physicians were 23 percent more verbally dominant and engaged in 33 percent less patient-centered communication with Black patients than with White patients.[15]
- Compared with White people with the same symptoms, Black people are more frequently diagnosed with schizophrenia and less frequently diagnosed with mood disorders.[16]
- Native and Indigenous American adults have the highest reported rate of mental illnesses of any **single race** identifying group.

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MARKETING THE LAW FIRM

MAY 2021

# Professional Development: How to Be An Ally In the Legal Profession

By Sharon Meit Abrahams

Last year law firms sent out announcements about their commitment to Diversity, Equity, and Inclusion (DEI) efforts in response to racial tensions. Approximately 50% of respondents in a recent survey conducted by Legal Talent Advisors, LLC reported their firms' commitment to DEI stayed the same, while 42.5% reported more effort was made in 2020. One of the initiatives firms stated they implemented is a formal allyship program. However, allyship is not a program or a mindset. It is a verb.

## What Is Allyship

Allyship is when a person takes concrete steps that positively impact underrepresented individuals; racially and ethnically diverse, differently abled, women and LGBTQ+ attorneys in the work environment. "Just as start-up companies need capital to build and grow, underrepresented groups need access to political capital to effect real change in an organization," explains Joy Heath Rush, CEO, ILTA (International Legal Technology Association). Like in business, allyship should be used in a strategic fashion to achieve improvements in firm policies and practices — the written ones and the unwritten ones. All firm leaders should be allies, as well as anyone in a firm who can use their influence to initiate change.

## Why It Is Important

The legal field is one of the hardest professions to be in, not just for the lawyers, but for the professionals on the business side. Lisa Linsky, McDermott, Will & Emery's first Partner-in-Charge of Firm-wide Diversity & Inclusion notes: "Having allies in the workplace means there are people who believe in you, support your professional growth, and take a stand for inclusion." Allies actively support the efforts of underrepresented/marginalized groups to affect change in their firms. Linsky says the key is *active* support, not those who *go along* with supporting diverse attorneys.

## How to Be An Ally

## **Learning**

Before anyone acts as an ally, they need to be introspective to determine their unconscious biases and then “take action to disrupt those biases,” comments Sylvia James, Chief Diversity & Inclusion Officer at Winston & Strawn LLP. Authentic allies, sometimes referred to as collaborators or accomplices, embrace fighting injustice and promoting equity in their workplace as a matter of routine.

A key to being an ally is to learn more about the issues facing diverse colleagues. There are a number of non-fiction books that highlight personal experiences, such as books that explore not having the courage or confidence to be “your true self” at work. Fictional novels written by authors from diverse backgrounds can give a glimpse into different life experiences as well as give the reader better understanding of diverse cultures. There are many articles, podcasts and documentaries available that give light to the struggles of the underrepresented.

Another learning path is to engage in dialogue by asking individuals about obstacles and experiences they have faced at work. Many of the stories will be disheartening but listen intently while trying not to make assumptions. It can be difficult to appreciate another’s perspective when there is no reference point.

## **Action**

The learning will never stop but action should begin immediately. There are two areas that can be confronted: management and individual. On the management front, a law firm leader ally would “help with discussions with [firm] management,” comments Jack Lord, Partner and Co-chair of Foley & Lardner’s LGBTQA Affinity group. Linsky adds, “ensuring firm management is culturally competent in how it messages inclusion, equality and equity to the entire organization,” is critical on the management side. On the individual front, allies can use their clout to ensure quality and challenging work is equitably distributed, business development opportunities are offered, and introductions to clients, powerful people, and influencers are received. Bill Nolan of Barnes & Thornburg describes allyship as, “person-to-person hand-to-hand combat connecting with people and just working with them on a dedicated and consistent basis.”

James explains, “that the most important role an ally has is to speak up and use their voice to amplify the voices of those who might be marginalized.” A true ally uses their privilege, power and connections to teach and influence others. Allies examine the work environment for racist and sexist comments and behaviors that are exhibited consciously and unconsciously then they call it out.

## **Ally Challenges**

Being an ally is hard work. There are social injustices happening in the workplace on a constant basis, so more allies are needed. Stephen Smith of Out Leadership explains: “A common fear that can keep potential allies from becoming active allies is the fear of becoming the target of abuse by standing up for others.” Nolan says, “allies may be concerned that their colleagues (inside or outside their organization) will not support them.”

Fear of saying the wrong thing, in the wrong way with the wrong words trips up allies and potential allies. Well known diversity consultant and now VP, Inclusion Strategy at Netflix, Verna Myers, wrote “*What if I say the Wrong Thing*” to address this fear (see, <https://amzn.to/3v9ysLK>). David Sanders, partner at Foley & Lardner LLP shared that friends and colleagues, “took me to task early on, knowing my heart was in the right place, even when my word choice was still evolving”.

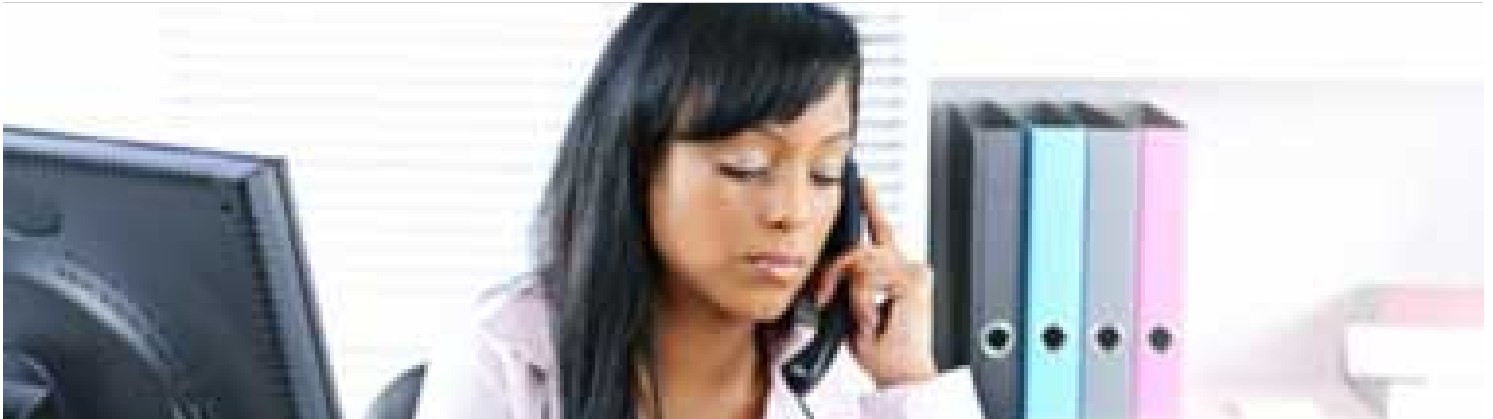
Pushing for change in a law firm is like seeing a stone roll on its own. Something has to initiate the movement. To be an effective ally, anyone in a firm, especially the leaders need to take the first step.

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LEGAL MARKETPLACE

## Did the pandemic set back the DEI clock?

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Did the pandemic roll back even the limited progress that law firms have made in the areas of diversity, equity & inclusion (DEI) over the past 30 years?

To state the obvious, law firms have not made much progress in the areas of diversity, equity & inclusion (DEI) over the past 30 years as even a cursory glance shows key challenges the same and the stats have not significantly improved.

The 2020 Diversity Score Card indicates that the number of minority attorneys within law firms has increased by less than 4% since 2010. Further, and a new report from the National Association for Law Placement finds that large U.S. law firms continue to make very slow progress in increasing their ranks of women and professionals of color.

During the 2008 recession law firm DEI efforts ground to a virtual standstill, revenue declined, budgets were cut, and the limited work that came in was not given to women and minority attorneys. DEI leaders feared what happened in 2008 would be repeated in during the pandemic as firms would offer it as a scapegoat to allow them to thin their ranks. Did history repeat itself in 2020?



## Mobilizing DEI efforts

When stay at home orders were put in place, Kori Carew, Chief Inclusion & Diversity Officer for Seyfarth Shaw, explains that DEI colleagues she had spoken to said they had immediately mobilized, asking “What can we do, so that what happened in 2008 doesn’t happen again?” Clearly, they weren’t alone.

Members of the **Leadership Council on Legal Diversity (LCLD)**, an association of more than 350 corporate chief legal officers and law firm managing partners that works toward building a more diverse legal profession, also were deeply invested in the DEI work at their firms or companies, explains Bonnie Lau, a partner at Morrison Foerster and alumni chair of LCLD. “LCLD members have stayed committed to maintaining the status quo or even adding DEI resources,” Lau says.

To underscore that, a recent survey conducted by **Legal Talent Advisors** showed that nearly 50% of respondents stated their firms’ commitment to DEI efforts stayed the same while 42.5% reported their firms expanded their efforts in 2020. The survey also found that 55% of respondents reported their firm’s DEI budgets remained the same while 30% saying it increased. Less than 3% had their budgets frozen. and 2.5% saw a reduction in their DEI budgets.

Overall, law firm budgets were distributed differently in 2020 due to the pandemic. DEI budgets, like many other initiatives, were reallocated because there were additional funds available because in-person events were cancelled. Many firms used their discretion in re-directing those funds. For example, Jenner & Block used it diversity dollars to bring in “more [virtual] speakers, more events, and everyone could be invited,” says Courtney Carter, Director of Diversity & Inclusion at the firm.

Moving to a virtual world also had a positive impact on attendance at DEI events. In the past, firm leaders noticed that attendance at DEI programs and training workshops was less than ideal. Amid the pandemic, “being virtual allowed us to offer more DEI webinars and virtual training,” notes Michelle Weber, COO of Bilzin Sumberg, adding that “to our great satisfaction, the virtual nature of these initiatives invited more participation than in-person events would have, resulting in elevated firm-wide consciousness of DEI issues.” Indeed, many firms have indicated that the attendance is higher at virtual events compared to in-person because there is no extra travel time.

“It is far easier to work across geographical lines when we are all remote, which means more and better opportunities for all,” observes Yusuf Z. Zakir, the Chief DEI Officer at Davis Wright Tremaine. DEI leaders frequently explain that the lack of challenging work with quality clients is one reason for the failure of women and diverse attorneys to grow and develop in their roles, Zakir explains, adding that this wall has now been torn down as attorneys can work across offices and departments with ease.

However, Zakir does inject a note of caution. “It is much easier to reinforce the status quo and continue to include the same folks that were historically included, often to the detriment of underrepresented populations,” he says, adding that this clearly shows how important it is that firms press their partners and leaders to look beyond their “usual” go-to attorneys.

## Reaching out to minorities

With stay-at-home orders in place and COVID-19 cases rising, it became clear (and was noted by the Centers for Disease Control & Prevention) that the pandemic was disproportionately affecting minorities.

Rebecca Baumgartner, Senior Manager at Ogletree Deakins, says this knowledge led her to kick into gear the firm's diversity outreach, asking shareholders if anyone was falling behind on a consistent basis. "It was worth the effort because an attorney who lives alone, in a small apartment, was identified as feeling separated from her colleagues and work," Baumgartner says. The firm was then able to get shareholders to reach out to the associate to ensure her that she is valued and successful in her work.

A number of law firms also launched a requirement that partners personally connect attorneys who work with them. The goal is to touch base, not to talk about work.

Indeed, these newly built attorney communities may be a positive by-product of the pandemic. Carew said that Seyfarth, like many firms, went immediately into a communications mode to reach out to minority groups. Her team educated the firm on barriers that exist for diverse attorneys and how the pandemic and lockdown had exacerbated those obstacles. To move this even further, Seyfarth started an All-Diverse Attorney Check-in Initiative, which shared resources and learned how to stay visible to the partners who assign work. "At the first check-in call in 2021, we heard 'Thank you for creating this safe space,'" says Carew.

Jenner & Block's Carter agreed, noting that "from the moment COVID-19 started we were very focused on the communities within the firm." Jenner & Block's unique approach was to focus on its Care-Giver Affinity group which consists of attorneys and staff. The group provides coping resources and activities to engage the caregiver with their children, parents, or other family members.

While there's no doubt the pandemic upended many businesses, some law firms used the disruption as an opportunity to focus more energy on their DEI department, while other firms simply became busier than usual.

In every case, however, it is clear that the pandemic impacted DEI efforts across the board. Fortunately, these efforts were, and are continuing to move in a positive direction. It is safe to say that history has not repeated itself.

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