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**PROGRAM MATERIALS**

**Program #31258**

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## **Life After Leave: Best Practices That Support Inclusive Cultures and Psychologically Safe Workplaces**

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## Life After Leave

Improving Best Practices that support  
Inclusive Cultures and psychologically safe  
workspaces

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A newer non-equity partner at a mid sized law firm is experiencing anxiety and depression. She knows her work is suffering, and she is past the point where she believes she can treat her illness and manage her workload. Her family is encouraging her to take a leave for more intense treatment but she is terrified of taking so much time off of work. She doesn't have any idea how to even start the conversation at work or what resources might be available to her. Unsure of how the firm will react and whether she will even have a job after the leave, she stalls. Things get worse. The work she was trying to protect is declining in quality and she finally musters the courage to have the initial conversation with the partner in charge of her office. He is sympathetic but also has no idea how to proceed. He offers sympathy but little in the way of reassurance about her place or future in the firm. He directs her to HR.

HR is helpful with standard information on FMLA but can't provide any insight as to how a leave will affect her compensation, bonuses, client relationships, etc. She has a couple additional awkward conversations with other firm leaders that do little reassure. But, without a clear understanding of how to ramp down her work to take a leave or what her future will look after, she takes a leave of absence. She returns to work after 8 weeks. The partner in charge of her office is loaded down with work and has the best intentions to meet her the day she returns. 3 days pass before they connect. She knew that some of her matters that were heating up before she left would be reassigned but she is not sure if she is expected to have any role now that she is back. She also begins to notice that she is not being referred any new significant matters. A fellow partner made a comment that they don't want to "stress her out" but no one has asked her what might actually "stress her out." She begins networking for new opportunities.

## Scenario



# The Legal Industry Is In Crisis

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Adverse Effect  
On Mental Health

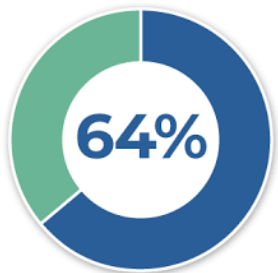
**74 percent** of the respondents to ALM's Mental Health and Substance Abuse Survey said they think the profession has had a negative effect on their mental health



Depression

The results of the ALM Survey demonstrate a serious problem:

- **56 percent** said mental health problems and substance abuse are worse in the legal industry than in other industries;
- **41 percent** said mental health problems and substance abuse are at a crisis level in the legal industry;
- **18 percent** said they have contemplated suicide during their professional legal career;
- **31 percent** said they are depressed;
- **64 percent** said they have anxiety;
- **10 percent** said they have an alcohol problem and **3 percent** of respondents said they have a drug problem.



Anxiety

# The Legal Industry Is In Crisis

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*“We have the perfect storm of both personality traits and career circumstances which are generally known to cause depression. Most lawyers are type-A people who put way too much pressure on themselves, even when they are doing great financially and professionally. They always want to do better and rarely think that they have done enough to deserve a break. As a result, many work longer and longer hours, even when they have enough money and success to justify decreasing their hours. Also, in our profession, we are always being attacked, literally, from opposing counsel and other players in litigation. Other than professional boxing, I can’t think of any other profession where the job requires constant fighting!”*

*—Tina Willis, founder of Tina Willis Law, Orlando, Florida*

*“The legal profession combines long hours, high stress, isolation, a trained need to never show vulnerability, and work that by its very definition is antagonistic and conflict-laden, and that makes for a toxic environment conducive to addiction and mental health issues. Legal work combines all the elements that contribute to substance abuse and other disorders into one toxic pot.”*

*—Kevin Chandler, an attorney at Hazelden Betty Ford Foundation*



# The Legal Industry Is In Crisis

This situation got even worse during the COVID-19 pandemic:

- 78% say the pandemic has negatively affected their mental health
- Since the outbreak of the pandemic, 75% of people say they feel more socially isolated, 67% of people report higher stress, 57% are feeling greater anxiety, and 53% say they feel more emotionally exhausted.

*“I’m out of ideas and have zero motivation to even get to a point where I feel inspired,” she wrote, responding to a request by The New York Times for people to describe their work-related challenges in Month 13 of the pandemic. “Every time my inbox dings, I feel a pang of dread.”*

– New York Times, *We Have All Hit a Wall*

# More Statistics...

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Gartner evaluated exhaustion levels in 202 corporate lawyers by using a modified Bergen burnout inventory, which is a set of questions commonly used to quantify exhaustion. Of the 20% of corporate lawyers who scored as highly exhausted, 41% of them showed signs of psychological distress, 68% were looking to leave the organization, and 61% frequently delayed or killed projects in which they were involved.



Lawyers shouldn't have to get to crisis mode for our industry to start prioritizing well being. An engaged and valued workforce is a more productive workforce. Finding meaning through your work leads to higher engagement and is a key ingredient of wellbeing.

How does that apply leaves of absence? An essential component of meaningfulness at work is that knowing that you matter and that the work you do matters. Prioritizing a valued colleague's health over the bottom line signifies the importance of that colleague.

*Positive Professionals: Creating High Performing Profitable Firms through the Science of Engagement. Anne Brafford*

## The Case For Mental Health and Wellness at work

## The Case For Mental Health and Wellness at work

In her *Harvard Business Review* article “We Need to Talk More About Mental Health at Work,” Morra Aarons-Mele shares research showing that “feeling authentic and open at work leads to **better performance, engagement, employee retention, and overall wellbeing.**”

The Harvard Business Review has further reported that:

- **Nearly half of both Gen Zs and Millennials ranked their mental health as their first or second priority in life**, with only physical health ranking higher on the list of priorities.
- **Forty-eight percent of Gen Zs and 44% of Millennials report feeling anxious or stressed all or most of the time**, with a higher proportion among women and young parents.

# The Case for Mental Health and Wellness at work

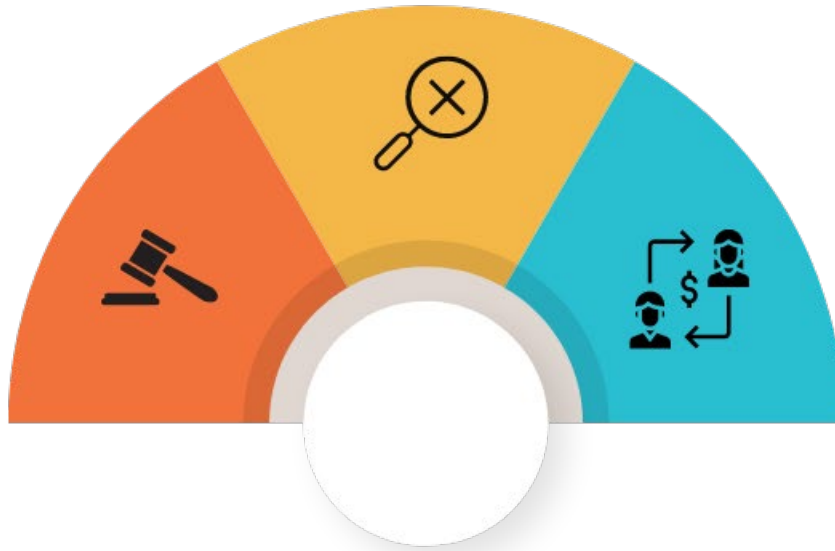
- 25% of women and 17% of men are considering leaving legal industry because of mental health issues, burnout, or stress
  - Moderate to severe depression and anxiety symptoms
  - Moderate to severe stress levels
  - Higher rate of engagement in risky and hazardous drinking
  - Higher than average levels of work-family conflict
- 20% of lawyers are unsatisfied with how their firm supported parents during the pandemic
  - Those that took parental leave felt it affected access to quality work and promotions
- Mental Health at Work Report 2021
  - 91% believe a company's culture should support mental health
  - 66% have spoken openly about their mental health at work in the past year
    - Only 49% described this experience as positive
  - 84% report at least one workplace factor has negatively impacted their mental health

# The Case for Mental Health and Wellness at work

## The Big Disconnect

	Disconnect			
Employer support for mental health	65%	of employers report that employee mental health is supported well or very well	51%	of all employee respondents agree
	71%	of employers with frontline employees report supporting mental health well or very well	27%	of frontline employee respondents agree
Access to mental health supports	20%	of employers report that improving access to substance use disorder treatment and recovery supports is a priority	84%	of employee respondents with a substance use disorder report it is challenging to access care
	31%	of employers report that improving access to mental illness treatment is a priority	67%	of employees with a mental illness report that it is challenging to access care
Workplace stigma	23%	of employers report that they implemented an anti-stigma/ awareness campaign in the last year	79%	of all employees report that an anti-stigma/awareness campaign would be valuable
McKinsey & Company				

# The Case for Mental Health and Wellness at Work



## 01 MALPRACTICE AND SANCTIONS

40-70% of disciplinary proceedings and malpractice claims involve substance use, depression, or both.

## 02 ABSENTEEISM AND LOST PRODUCTIVITY

Depression doubles employees annual sick days and causes 4.3 to 5.5 days of lost productivity.

## 03 TURNOVER COSTS

Cost of replacing an associate ranges from \$220k - \$500k - or 1.5x to 2x their annual salary.

- Significant costs associated with poor associate well-being
- Costs U.S. employers more than heart disease, cancer, stroke, and obesity combined
- National Safety Council pre-COVID study shows that organizations spend over \$15k a year for each employee who is experiences mental health issues.

# New York-based Professional Services Office, 330 employees

**TOTAL COST: \$611,016**



## Lost Time

COST:

**\$200,384**



## Job Turnover & Re-training

COST:

**\$239,840**



## Health Care

COST:

**\$170,792**

# New York-based Professional Services Office, 330 employees

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Missed Days Due to Illness – 298

Days of Work Skipped – 215

Number of Employees Who Will Cause a Safety Incident – 1

Total Annual Turnover – 11

Excess Annual Healthcare Use:

Days in Hospital – 8

Emergency Room Visits – 11

Outpatient Visits – 100

Each mentally distressed workers cost employers:

Over \$2,800 more in health care services per year than their peers

Over \$4,700 a year in extra days of work missed

Over \$5,700 a year in turnover costs



# Mental Health and Wellness at Work: Solutions

## Workplace Culture

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What is culture? What are cultural norms?

- Characterized by the social forces that shape behavior and beliefs through mechanisms such as norms, support, modeling, training, rewards and communication. Norms are social expectations for behavior and beliefs—“the way we do things around here.”
- Cultures work at both conscious and unconscious levels, from concrete procedures, such as no-smoking policies, to subtle influences, such as peer group attitudes about taking a lunch-time power walk.

What does this have to do with Mental Health and Wellness?

- Take a look at what cultural norms and physical attributes of environment impact employees' health and wellness.
  - Flexible Work Schedules
  - Telecommuting Opportunities
  - Seating arrangements – shared workspaces vs. closed offices
  - Healthier eating options in snacks or cafeterias
  - Healthy productivity and work practices
  - Psychological Safety and Inclusive Leadership principles
  - New time off and leave policies
  - More inclusive health benefits

People			Accountability	
Systems	<b>Leaders</b> understand, visibly support, and normalize mental health.	<b>Managers</b> are proactive in supporting mental health and know how to respond to challenges.	<b>All employees</b> are aware of the mental health supports available.	<b>Mental health goals are measured,</b> tracked, and iterated on to meet the needs of the organization.
	<b>Daily practices</b> and working norms are supportive of mental health.			<b>Clear ownership</b> over mental health strategy and goals.
	<b>Policies</b> name mental health and support mental health goals			Strategy, programs, and practices are <b>inclusive.</b>
	<b>Benefits</b> are high-quality, well-understood, and accessible.			

# Mental Health and Wellness at work: Solutions



- Health Affairs study shows that for every \$1 an employer spends on wellness programs, their medical costs decrease by \$3.27 and costs associated to absenteeism drop by \$2.73.
- A 2016 Lancet Psychiatry study shows that every dollar spent to improve by 2030 will quadruple their return.
- Younger generation of lawyers and law students prioritizing mental health and wellness. More robust programming will be more attractive to them.



madalyn  
@madalynrose

Follow

When the CEO responds to your out of the office email about taking sick leave for mental health and reaffirms your decision. 100



Madalyn Parker  
to ooto  
Yesterday [View details](#)

Hey team,

I'm taking today and tomorrow to focus on my mental health. Hopefully I'll be back next week refreshed and back to 100%

Thanks  
Madalyn



Ben Congleton  
to me  
4:23 PM [View details](#)

Hey Madalyn,

I just wanted to personally thank you for sending emails like this. Every time you do, I use it as a reminder of the importance of using sick days for mental health – I can't believe this is not standard practice at all organizations. You are an example to us all, and help cut through the stigma so we can all bring our whole selves to work.

# Mental Health Leave and Engagement

# Mental Health Leave and Engagement

## Roadblock to Care

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“Stigma is one of the most significant obstacles standing in the way of employees taking steps to get mental health support at all. Even before the pandemic, one out of five U.S. adults experienced mental illness. Unfortunately, eight of 10 workers did not seek treatment due to shame and stigma.”  
Maven Mental Health Study

Three types of stigma: *internal, public, structural*

### **How can workplaces reduce stigma?**

Normalize conversations about mental health, starting with leadership

Create and Employee Resource Group to support mental health

Identify and model healthy workplace behaviors

Provide training for all levels on mental health and well-being

Inclusive leadership training

# Barriers Lawyers Face when Taking Leave

Challenges particular to lawyers:

An extended absence may adversely affect billable hours goals and other metrics. Lower metrics may lead to reductions in compensation and bonuses.

Lower metrics may delay partnership consideration.

The nature of client service demands that lawyers are available to their clients almost 24/7 and they routinely receive the message that there are a number of lawyers out there ready to take their place.

Lawyers without their own clients may fear damaging relationships with originating attorneys and losing out on high dollar or high value work.

Lawyers with their own clients may fear the loss of reputation and the loss of income since compensations and bonuses are often tied to originations. They lose their current *and* future work.

High originations often confer power and status and attorneys risk their position at the firm if those suffer.

The private practice industry bias against taking any time off or even working a 40 hour work. There are a number of subtle signals we send that taking time off or being unavailable is detrimental to your success.

Lawyers are “selling” their brains and any leave that suggests a mental issue will be difficult to face.



# From “the Path to Lawyer Well Being” Report

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MENTAL HEALTH &  
SUBSTANCE USE  
DISORDERS

Is there a policy  
regarding substance use,  
mental health, and  
impairment? If so, does  
it need updating?

Is there a leave policy  
that would realistically  
support time off for  
treatment?

Are there meaningful  
communications about  
the importance of well-  
being?

Do health plans offered  
to employees include  
coverage for mental  
health and substance use  
disorder treatment?

# From “the Path to Lawyer Well Being” Report

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## **Assessment of Well-Being:**

Is there a regular practice established to assess work engagement, burnout, job satisfaction, turnover intentions, psychological wellbeing, or other indicators of well-being and to take action on the results?

## **Orientation Practices:**

Are orientation practices established to set new lawyers up for success, engagement, and well-being?

## **Work-Life Balance-Related Policies & Practices:**

Is there a policy that allows flexibility and an organizational climate that supports it? Is it a practice to recognize lawyers and staff who demonstrate a high standard of well-being?

## **Diversity/Inclusion-Related Policies & Practices:**

Diversity and inclusion practices impact lawyer wellbeing. Are policies and practices in place with a specific mission that is adequately funded?

## **24/7 Availability Expectations:**

Do practices allow lawyers time for sufficient rejuvenation? Are response time expectations clearly articulated and reasonable? Is there an effort to protect time for lawyers to recover from work demands by regulating work-related calls and emails during evenings, weekends, and vacations?

# From “the Path to Lawyer Well Being” Report

## **Vacation Policies & Practices:**

Is there a clear vacation policy? Does the organizational culture encourage usage and support detachment from work?

In their study of 6,000 practicing lawyers, law professor Larry Krieger and psychology professor Kennon Sheldon found that the number of vacation days taken was the strongest predictor of well-being among all activities measured in the study.

It was a stronger predictor of well-being even than income level.<sup>274</sup> This suggests that legal employers should encourage taking of vacation—or at least not discourage or unreasonably interfere with it.

There were several points along the way where the firm could have helped the attorney feel more at ease about taking a leave and could have set the stage for a successful exit and re-entry.

The best place to start is before you have an attorney that needs to take a leave. Chances are you have a parental leave policy but many firms didn't have them 30 years ago. They only developed them after lawyers (women) started requesting them. Those leave policies have evolved and are now commonplace and part of the ordinary course of business. People are more secure about taking the time they need when it is normalized as part of the "ordinary course of business."

## Back to our Scenario

Make taking a leave ordinary -- If you work for 40 years that is 2080 weeks. One 16 week leave is *less than 1%* of your working life.

### Clear and Consistent Communication

Have policies, practices in place available and easily navigated. Sample Impairment Leave policy.

Appoint a designated person to handle leaves (HR, Ombudsperson, Board member, etc.)

Make sure health resources are readily accessible (Health insurance policies, EAP information in a manual or on a wellbeing portal or both).

Critical conversations: Confidentiality expectations and client communications. Who is handling and how much can you share?

## Before the Leave



GIVE THE ATTORNEY SPACE TO DEVOTE THEIR ATTENTION TO THE REASON FOR THE LEAVE. THIS WILL LOOK DIFFERENT DEPENDING ON WHY THE LAWYER TOOK THE LEAVE, THEIR POSITION, AND THEIR INDIVIDUAL CAPACITY.



MAINTAIN CONFIDENTIALITY REGARDING THE INDIVIDUAL'S SITUATION. YOU WILL HAVE TO ALERT CLIENT'S AND COLLEAGUES TO THE ABSENCE, BUT EVERYONE IS NOT ENTITLED TO THE SAME LEVEL OF INFORMATION.



GIVE THE LAWYER ON LEAVE DEFERENCE ON HOW MUCH TO ENGAGE. ALWAYS BE MINDFUL OF APPLICABLE EMPLOYMENT LAWS.



OPEN UP A DIALOG WITH THE INDIVIDUAL *BEFORE* THE FIRST DAY BACK ABOUT WHAT RE-ENTRY WILL LOOK LIKE.



PREPARE FOR THE INDIVIDUAL'S RETURN, WHICH MAY REQUIRE CONVERSATIONS WITH OTHERS WHO HANDLED MATTERS FOR THE ATTORNEY ON LEAVE. THERE IS NO ONE SIZE FITS ALL ON

# Employer Best Practices *During Leave*

# Return to Work Anxiety

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As more organizations are returning to the office, there's an increase of mental health issues reported.

- Over 40% of adults reported feeling anxious or depressed in February 2021, up from 36% in August 2020.
- Nearly half of employees (48%) say they experienced high-to-extreme stress over the past year, and just the thought of returning to the office brings some level of anxiety to 100% of employees.
- Some experts expect to see an increase in stress and trauma, similar to the 21% rate of post-traumatic stress disorder found among survivors of Hurricane Katrina a year later.
- Only 55% of employees believe their employer truly cares about them.



# Return to Work Anxiety

Impact on vulnerable populations

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## Underrepresented populations have been hit harder by COVID

**Black Americans** – Also living during a racism pandemic. Stress of racism causes increase of mental health issues, physical issues, and burnout.

**LGBTQ+ Community** – 2x as likely as heterosexual adults to experience mental health issues. Transgender individuals have 4x the risk compared to cis individuals. They also must overcome stigma and discrimination related to their gender identity and sexuality.

**Working Parents** - Struggling with burnout, with mothers struggling 28% higher rate than fathers. Less than 40% of employers believe their working parent programs are effective.

# Return to Work Anxiety

## Supporting vulnerable populations

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- Bring in mental health providers with expertise in racial trauma to help them work through their experience.
- Audit existing policies, e.g., hiring policies and compensation, to ensure everyone is being treated fairly and equitably
- Hold structured, courageous conversations about anti-racism on a regular basis
- Make sure your EAP or virtual mental health service offers culturally-humble care
- Expand your fertility benefits to help LGBTQ+ couples (and aspiring single parents by choice) afford building a family
- Offer paid parental leave for same-sex couples and adoptive parents
- Incorporate LGBTQ+ mental health into your manager and workforce mental health training
- Emphasizing results and outcomes over process, hours, or facetime allows businesses to help parents without compromising results.
- Create a culture of cooperation between parents and non-parents, especially around issues such as meeting times, deadlines and work loads.

# Strategies for a Successful Return



## Employer/Law Firm



Have on and off ramp policies that apply to all leaves of absence that do not require justification or approvals



Maintain a library of helpful information (e.g., bar association assistance or other support network information)



Engage the individual to discuss next steps and to set expectations. Don't penalize the attorney by withholding opportunities (even with "good intentions" to relieve stress or accommodate childcare). Don't *assume* what the lawyer is capable of handling upon return.



Do you need a Return to Work agreement that lays out the expectations and conditions of a return to work.



Welcome the individual back to the firm enthusiastically



Consider utilizing **Mindful Return** program

# Strategies for a Successful Return

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## Individual

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Connect a couple of weeks before return, be prepared with a proposed re-entry plan or goals

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Ask for what you need and be adaptable.

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Schedule a midweek return

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Try “single-tasking”

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Leverage your support networks

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Give yourself grace

# Don't forget about our collective "leave"

(from the office, not work)

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## RTO

RTO : Let decency dictate RTO policies and practices (Bloomberg Law)

## Flexibility

Prioritize flexibility and hybrid solutions

## Trust

Treat your teammates as adults who are capable of determining how to maximize remote v. in person work

## Don't Unlearn

Don't "unlearn" the lessons from the pandemic

## Resources

Provide additional well-being resources

## Reduce Stress

Reduce stress and anxiety by staffing matters appropriately

## Seek Feedback

Seek feedback from your lawyers and professionals about they need as they RTO

## Connection

Prioritize the office as a space for connections and relationship building (not being there just to be there).

# Crafting a solution for your firm

Questions to consider:

- ☐ Do leaders understand, advocate for, and visibly model mentally healthy practices?
- ☐ Are leaders trained to be compassionate and human-centered?
- ☐ Do all employees have a shared understanding of why mental health matters and feel safe talking about it?
- ☐ Do all employees know what resources exist and how to access them?
- ☐ Are harmful workplace practices and norms addressed?
- ☐ Does a clear mental health policy exist? Is it regularly referenced?

# Crafting a solution for your firm

Questions to consider:

- ☐ Are benefits relevant and equitable? Do employees feel safe using them?
- ☐ Are mental health programs inclusive of diverse identities and perspectives?
- ☐ Are mentally healthy practices reinforced by performance reviews?
- ☐ How are programs and initiatives embedded into existing programs?
- ☐ Is the solutions proactive or reactive? Does it address moments of need and/or daily experience?
- ☐ How will the solution be supported through policies, practices, and norms to ensure success? How will it's use be measured?



# Additional Resources

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National Safety Council Workplace Mental Health Calculator

“Capitalizing on Healthy Lawyers: The Business Case for Law Firms to Promote and Prioritize Lawyer Well-Being” by Jarrod F. Reich

Mindful Return

The Path to Lawyer Well-Being Report

Report and Recommendations of the NYSBA Task Force on Attorney Well-Being  
THIS IS US: FROM STRIVING ALONE TO THRIVING TOGETHER, October 2021



# #Notweakjusthuman

“Sadly, too often, the stigma around mental health prevents people who need help from seeking it. But that simply doesn’t make any sense. Whether an illness affects your heart, your arm or your brain, it’s still an illness, and there shouldn’t be any distinction...we should make it clear that getting help isn’t a sign of weakness — it’s a sign of strength — and we should ensure that people can get the treatment they need.”

MICHELLE OBAMA