

2023

STATE OF  
PRACTICE #3

Bloomberg Law®

# LEGAL Landscape



## Money Matters and the Evolution of the Workplace

**Bloomberg Law** surveyed 456 legal professionals (354 law firm and 102 in-house) in September and October 2023, on a variety of issues, including questions about securities & transactions, litigation finance, artificial intelligence, the job market, diversity, and more. This summary report highlights the topline results from the survey.

Note: Responses have been rounded to the nearest whole number.

# DEI / CORPORATE GOVERNANCE



Over 90% of those surveyed don't report seeing a substantial increase in their organization's diversity, equity, and inclusion (DEI) initiatives over the past year, nor do they expect their clients to significantly increase their DEI policies. However, nearly half of respondents who advise clients on corporate governance matters say that one of the most important ways to improve a board of directors' effectiveness is to enhance board diversity.

## DIVERSITY, EQUITY, INCLUSION (DEI)

**20%** say their organizations created **new guidance for consulting clients on DEI**.

Despite little change at present (and more than half of respondents not expecting change any time soon) about 40% of respondents believe that DEI program-related litigation involving their clients will increase in the upcoming year.

How will **litigation around DEI programs** will change for your clients in the upcoming year?

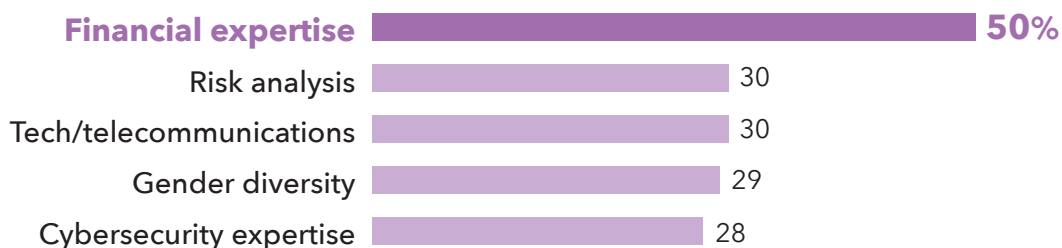


## CORPORATE GOVERNANCE

**42%** say they **"constantly or frequently"** work on corporate governance matters.

When advising clients on how to enhance the effectiveness of their boards, respondents consider the most important factors the director's independence (68%), the director's expertise/qualifications (63%), and the diversity of the board (43%). Lawyers say the specific types of expertise that clients most commonly seek in board members is financial expertise (50%)—with risk analysis, tech skills, gender diversity, and cybersecurity experience nearly tied for second place.

In the last year, **what qualities have clients sought** to enhance their board compositions?



Fourteen percent of respondents have used generative AI (Gen AI) for work, mostly to draft messages or for legal research. For those using Gen AI to draft or redline contracts, most trust the tech to a point but want legal professionals to check the work for errors. Only 5% would trust an AI-created contract completely, but no respondent said that they wouldn't trust it at all.



## What is **your experience with Gen AI**?

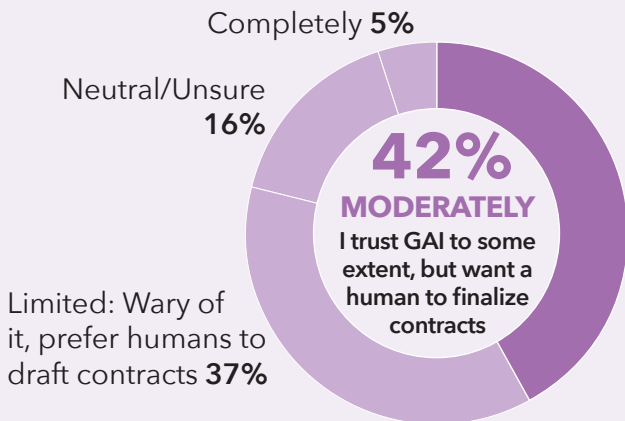
<b>Heard of it, but haven't used it</b>	<b>43%</b>
Used <b>personally</b> or just to try it out	42
Used <b>professionally</b> or on a work task	14
<b>Never</b> heard of it	1

In which of the following ways, if any, have you **used Gen AI in your practice**?

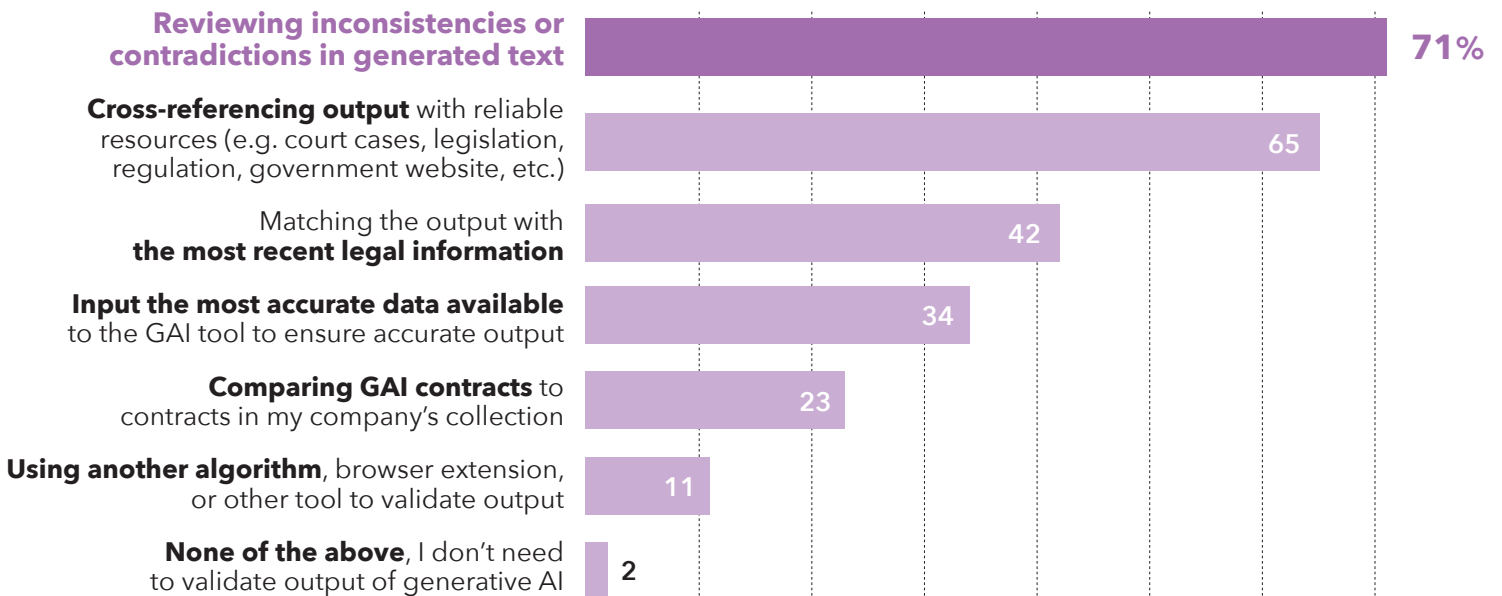
**Drafting or templating communication (e.g. memos, emails, correspondence to opposing counsel, etc.)** **58%**

Legal <b>research</b> in general	53
<b>Summarize</b> legal narratives	42
<b>Review</b> legal documents	34
<b>Draft/templating</b> legal contracts	23
<b>Due Diligence</b>	21
Other	19
Review <b>discovery</b>	15
<b>Negotiating/redlining</b> contracts	11
<b>Case Filings</b> (Pleadings, Motions, Jury Instructions, etc.)	8
<b>Estate Planning</b> (Wills, Trusts, etc.)	2

**How much do you trust Gen AI** to draft (or help draft) your legal contracts?



In which of the following ways have you **validated the results from Gen AI in your work**?



# ARTIFICIAL INTELLIGENCE

While a slim majority of respondents see clear benefits to using Gen AI (though most doubt it will improve the quality of legal work), three-fourths of respondents also have serious concerns, especially regarding privacy or fake or inaccurate data. As a result, organizations have taken steps to better understand Gen AI and set policies for its use.

Do you **agree** or **disagree** with the following statements? **Gen AI...**



On a scale from 1-5, how concerned are you about the following potential issues of Gen AI?



**Accuracy of text** generated by AI (Hallucinations)



**Data and Privacy** concerns



**Deep fakes** (e.g., human impersonations)



**Intellectual Property**



**Model bias**



Concerns over **job security**

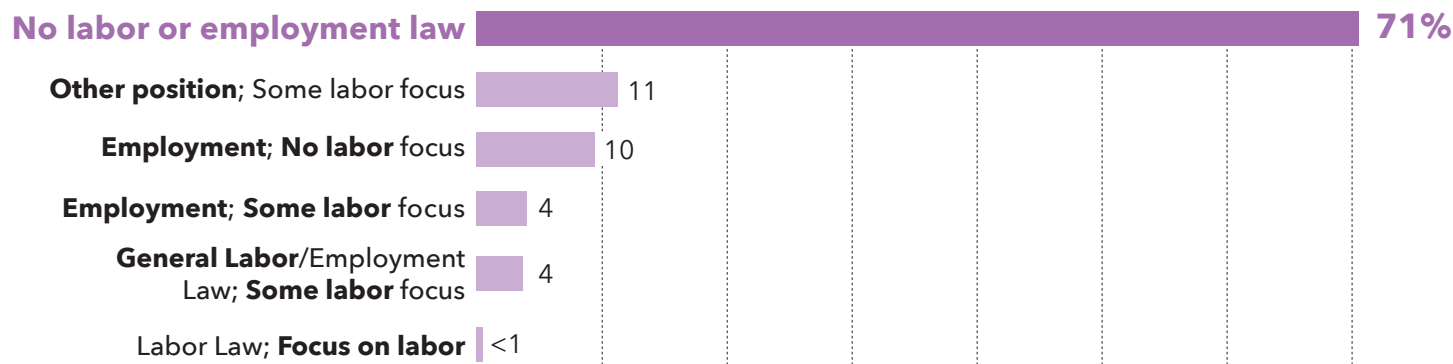


Which of these has your organization done **in response to generative AI?**

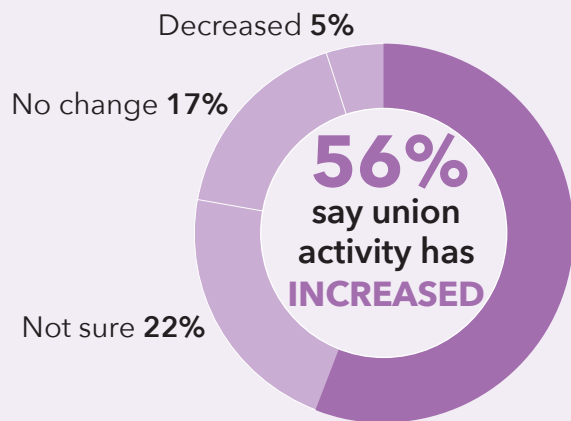
<b>Had internal discussions to better understand generative AI</b>	<b>47%</b>
Developed an <b>internal policy</b> on using external generative AI tools for work	32
<b>Updated existing</b> internal policies to address AI-related risks	27
<b>Not sure</b>	27
<b>Limited the use</b> of external generative AI tools for work	26
<b>Advised clients</b> on using it in their business	22
Purchased or <b>invested</b> in a generative AI tool	15
<b>Banned</b> the use of external generative AI tools for work	12
<b>Encouraged</b> the use of generative AI for work	11
Developed an <b>internal generative AI</b> tool	8

Most of the attorneys surveyed don't have a role related to labor matters. Among those that do, about half have noticed a recent increase in union activity, but not necessarily in labor-related work at their practice; 43% saw an increase, 46% didn't, and 11% aren't sure. Lawyers who regularly work on labor have advised their clients most often on collective bargaining and contract negotiations and advised least often on labor mediation.

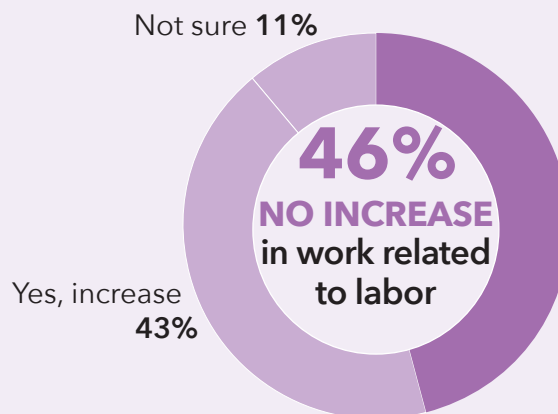
## Which of the following best **describes your role** as it relates to unions?



### What have you **noticed about union activity** over the past year?



### Have you noticed **an increase in labor-related work** at your practice over the past year?



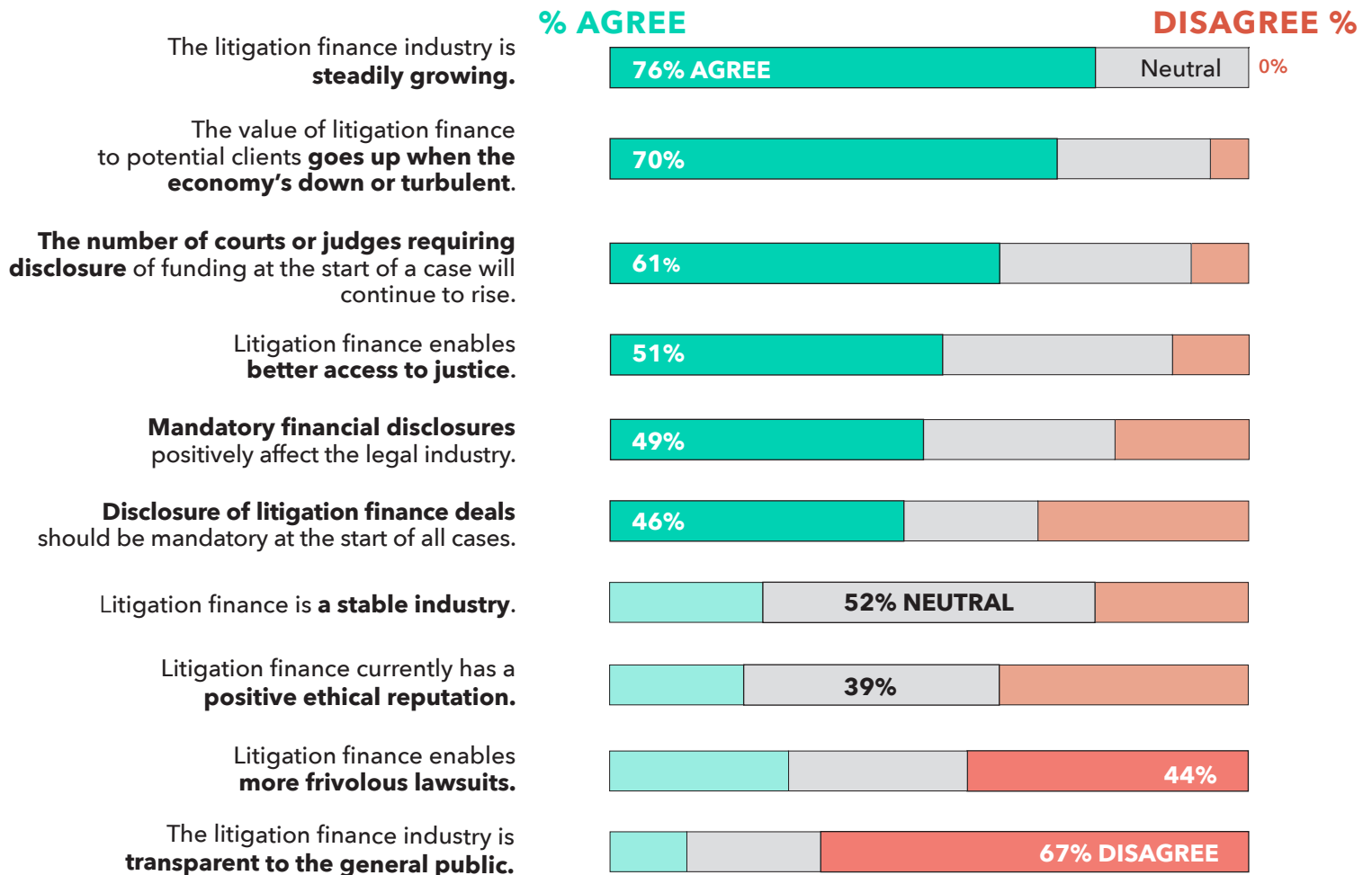
## What **labor/union-related activities** have you advised clients on most in the past year?

<b>Collective bargaining: Contract renewal negotiation</b>	<b>29%</b>
<b>Unfair labor practice charges</b> against employers	23
<b>Organizing</b> efforts	17
Collective bargaining: <b>First contract negotiation</b>	4
<b>Strikes</b>	4
Labor <b>mediation</b>	2

# LITIGATION FINANCE\*

Lawyers familiar with litigation finance tend to have a positive view of the industry. More than three-quarters of respondents believe that the industry is growing (the only statement in this section that no one disagreed with) and that litigation finance is more valuable in time of economic distress. Over 60% of lawyers who have obtained or are interested obtaining litigation funding want it for single case, as opposed to for a portfolio or other type of deal. Litigation funding is most commonly obtained for commercial litigation and patents cases.

## How much do you agree with each of the following statements about litigation finance?



For which **types of deals** have you obtained or interested in obtaining funding?\*

Types of deals	%
<b>Single-case financing</b>	<b>61%</b>
A portfolio of cases	32
I haven't obtained/am not interested in obtaining litigation financing	23
Other	3

...and in which **areas of practice** have you most often obtained funding?\*

Areas of practice	%
<b>Commercial Litigation</b>	<b>31%</b>
<b>Patents</b>	<b>31%</b>
Insurance/Insurance Defense	8
Mass Torts	8

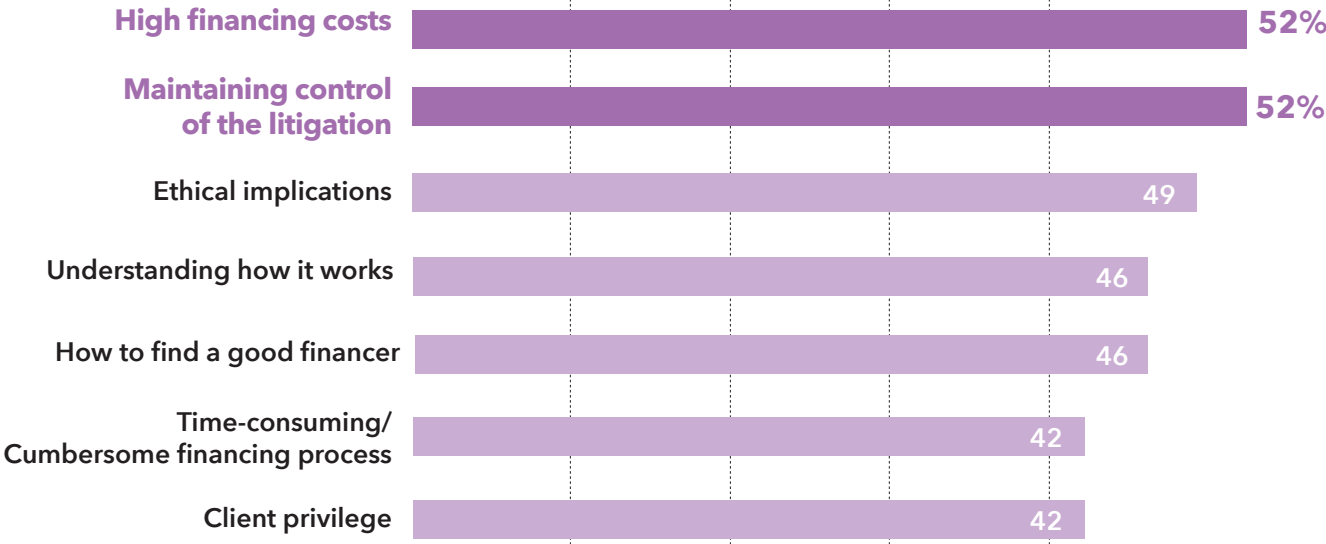
\*The questions on these pages were only asked of attorneys whose firms have used or are interested in using litigation finance.

Most law firms either don't use litigation financing, or their lawyers aren't sure if they do. However for those that do, "financial terms offered" is still the most important factor when choosing a funder. "Reputation" remains the second most important factor, but now only 68% of lawyers deem it important; down from 91% just a year ago. When they first considered litigation finance, respondents' were most worried about potentially high costs and the possibility of losing control of the litigation.

## What factors do lawyers consider important when choosing a funder?



## What were your biggest concerns when you first considered litigation finance?



### What are the most common clauses or terms in your litigation finance agreements?\*

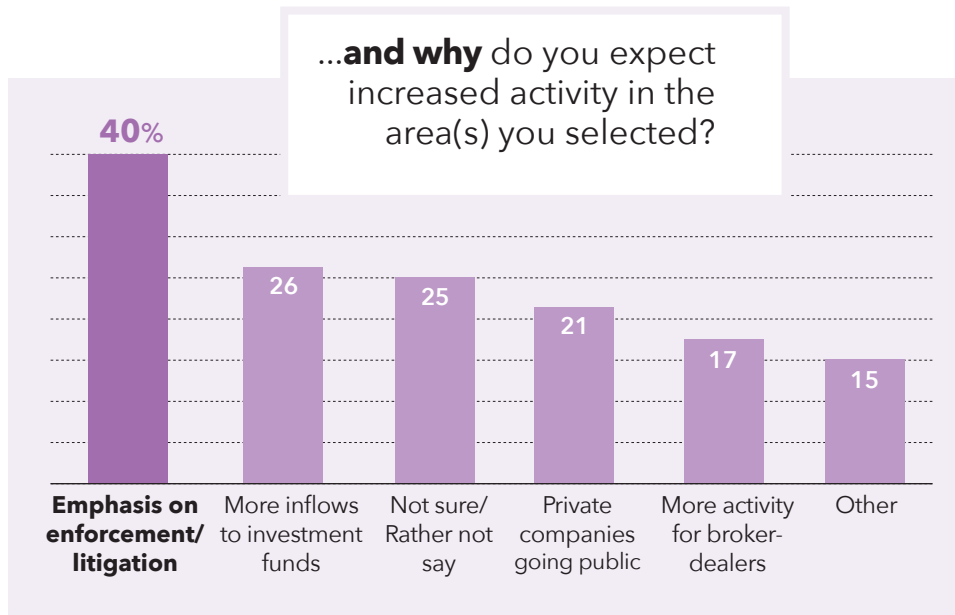
<i>I'm not sure which phrases are most common</i>	45%
"Attorney return subordinated to return of funder capital"	23
"Return waterfall based on multiple of invested capital"	23
"Cross collateralization with other matters"	19
"Share of proceeds based on duration of loan"	19
<i>We don't have any clauses or terms that are common in our litigation financing agreements</i>	19

# SECURITIES & TRANSACTIONS

Two-thirds of lawyers who practice securities and transactions believe legal work in the field will rise next year. Within that two-thirds, 1 out of 3 chose private equity as the specific area most likely to see growth. Those expecting more activity attribute the change to things like a greater emphasis on litigation and enforcement (40%), and more inflow to investment funds (26%).

In which areas of securities, if any, do you **expect to see an increase** in legal work in the next year?

<b>Private equity</b>	<b>33%</b>
Private companies	27
Securities litigation and enforcement	24
Public company representation	16
Broker-dealers and investment advisers	15
Public Investment funds (e.g., mutual funds, ETFs)	6

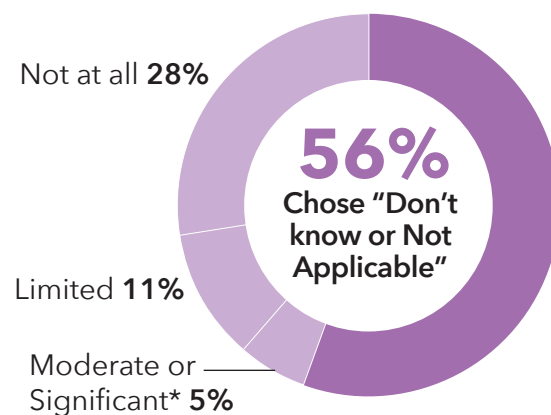


Most respondents (64%) expect to see a rise in securities work under the new SEC "Private Fund Adviser Rules," though 4 out of 5 of those lawyers couldn't say which of the new restrictions will be the most burdensome.

**What will be the top compliance burden or restriction** related to obligations under the new "Private Fund Adviser Rules" adopted by the SEC on August 23?

<b>Don't know/prefer not to answer</b>	<b>80%</b>
<b>Oversight</b> and reporting obligations	5
Preparing <b>quarterly financial statements</b> detailing fund performance, fees, and expenses	4
Provisions <b>prohibiting preferential treatment</b> for certain investors	4
The prohibition on private fund advisers engaging in certain activities and <b>practices contrary to the public interest</b> and the protection of investors	2
Undergoing <b>annual audits</b>	2
<b>Books and records</b> obligations	2
Preparing <b>disclosures regarding portfolio investment</b> compensation	1

**To what extent have you seen ethical/sustainable investment options** (in securities and fund offerings) integrated into your legal practice in the last year?

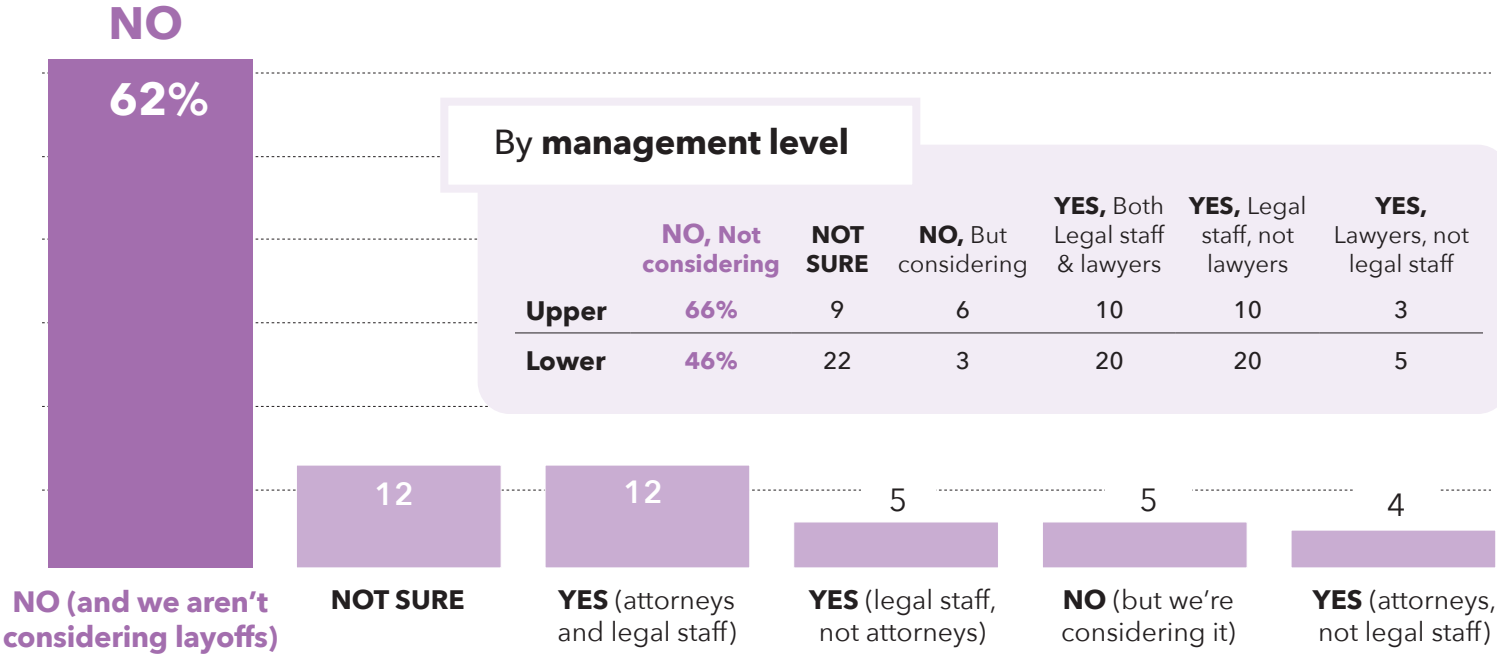


\*Moderate=5%; Significant= <1%



Respondents overwhelmingly say their organizations have had no layoffs and aren't considering them. Looking more closely, lower-level managers, perhaps unsurprisingly, are unsure about layoffs more than twice as often as higher-level managers. For the moment though, attorneys don't seem too worried. Most of them think that a bad economy or lack of work are the most likely to trigger potential layoffs, but almost 90% of respondents consider the job market in the legal industry to be strong or fair right now.

## Has your organization laid off any attorneys or professional legal staff in the last year?



## How strong or weak do you do you perceive the legal job market to be?



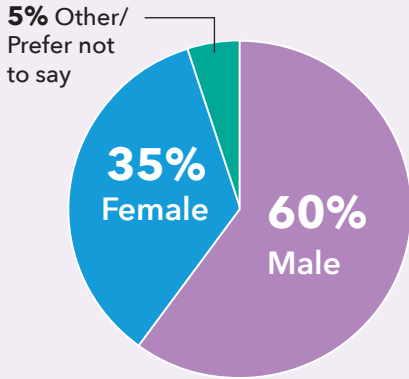
## Regarding layoffs, what factors do you think impact your organization's decision-making?

<b>Potential recession / economic downturn</b>	<b>44%</b>
Lack of work	41
Budgeting shortfalls	37
Legal professional overstaffing	25
Attorney overstaffing	20
Not sure/Decline to answer	11
Client departure	10
Improved efficiency via legal tech	10
Improved efficiency via Gen AI tools	3

# RESPONDENT PROFILE

## PERSONAL

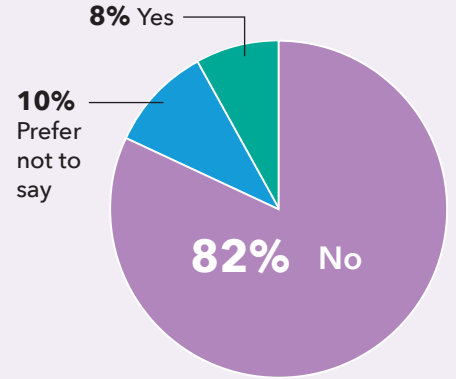
### GENDER



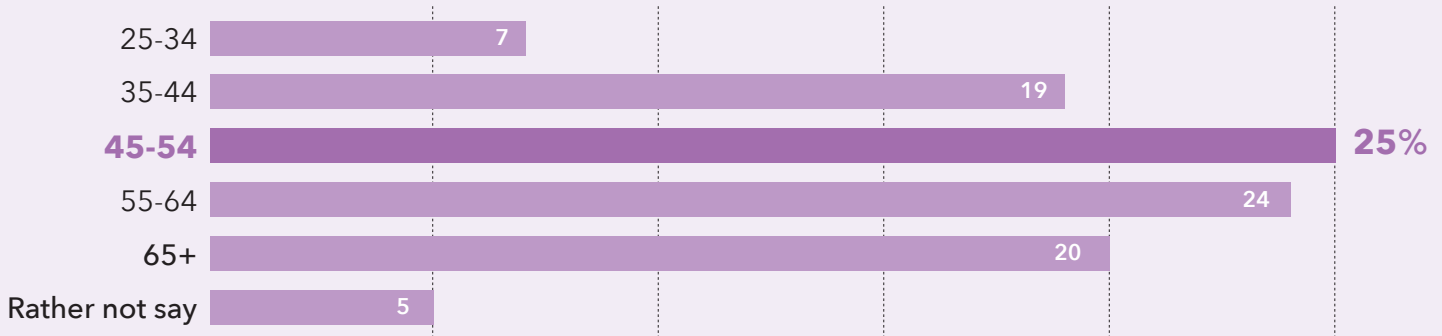
### RACE / ETHNICITY

<b>White or Caucasian</b>	<b>71%</b>
Black or African American	6
Multi-racial	5
Hispanic, Latino/a/x, or Spanish	3
Asian	2
Other, or Prefer not to say	13

### NEURODIVERGENT



### AGE

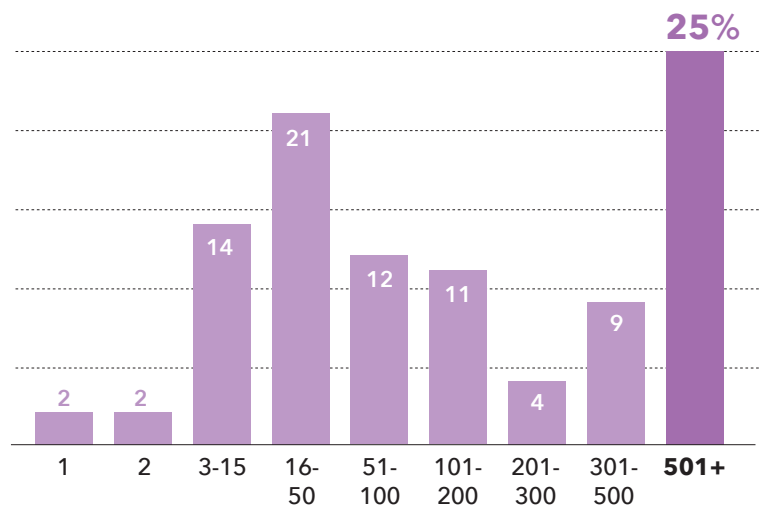


## PROFESSIONAL

In which of the following areas do you or the attorneys you support practice?

<b>Litigation (Business &amp; Tort)</b>	<b>39%</b>
Corporate	32
Commercial Contracts	31
Labor & Employment	24
Litigation (Other)	22
Real Estate	22
Mergers & Acquisitions	20
Compliance	18
Insurance	18

How many practicing attorneys are in your organization?



# RESPONDENT PROFILE

## PROFESSIONAL

Which best describes the **type of organization in which you work?**



Which of the following best describes your **professional title?**

<b>Non-Managing Partner</b>	<b>27%</b>	Senior Associate (practicing 8+ years)	8
Of Counsel/Senior Counsel	13	General Counsel	5
Managing Partner	11	Other position	3
Non-equity Owner	10	Chief Legal Officer	2
In-house Counsel	10	Staff Attorney	1
Associate (practicing 0-7 years)	9		

**25 yrs.** Average amount of time respondents have been practicing law

What is the **total annual revenue** of your organization?

