Bloomberg Law 2022

The Future of the Legal Industry

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Bloomberg Law 2022 – The Future of the Legal Industry

From questions around attorney well-being to diversity issues, to thoughtful discussions of return to office developments that impact the profession as a whole, the legal industry is poised for formidable changes in the months ahead. With this report, you'll get a deep understanding of the trends expected to have far-reaching implications for the legal industry in 2022.

Our experts take a thoughtful, forward-looking examination of how these key developments, along with expanding areas of law – like legal operations and litigation finance – will determine the path of legal technology, the business of law, and the entire legal industry in the coming months.

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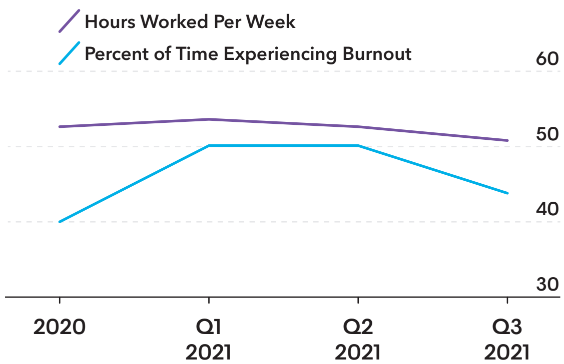
ANALYSIS

Attorneys' Well-Being Deficits Need On-the-Job Help

by Linda Ouyang
Research and Data Analyst, Bloomberg Law
Nov. 1, 2021

Back in January, Bloomberg Law fielded the **first iteration** of the Attorney Workload and Hours Survey to grasp attorney workload and well-being trends in 2020. In a continuing effort to understand these challenges in the legal industry, we have been conducting this survey on a quarterly basis. Now that we have almost two years of data to assess, it's clear that—despite encouraging recent results in terms of work hours and job burnout—general attorney well-being isn't showing signs of improvement. Fortunately, this is a problem that law firms, legal departments, and other employers of attorneys may have the power to alleviate.

Attorney Workload and Burnout Dip in Q3 2021
Number of publicly available agreements providing for this type of closing



Source: Bloomberg Law's Attorney Workload and Hours Survey (2020, Q1 2021, Q2 2021, and Q3 2021). Respondents were asked to report how many hours they work on average per week and percent of time they experience burnout for the previous quarter in which the survey was fielded.

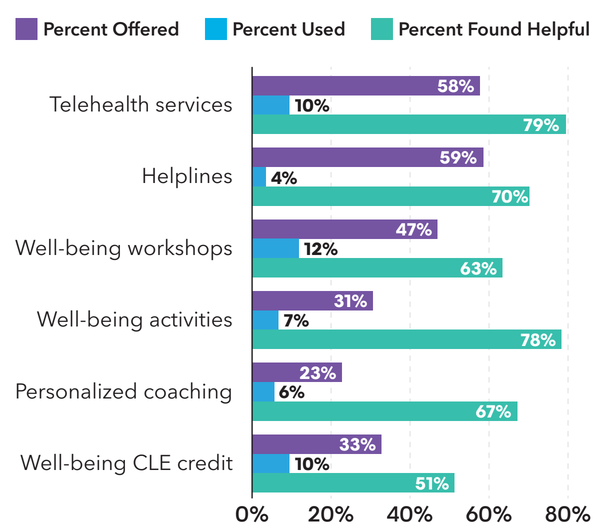
From 2020 through second-quarter 2021, attorneys were working an average of 53 hours per week, with billable hour attorneys working about two more hours each week than attorneys doing non-billable work. Workloads appeared to dip in Q3, with attorneys working an average of 51 hours per week. Still, that means attorneys are either working more than 10 hours per business day or sacrificing a portion of their weekends to make sure their job gets done throughout the year. To no one's surprise, considering the long work hours, attorneys are continuing to experience burnout on a regular basis since we began keeping track, with percent of time attorneys say they're burnt out between 40% and 50% of the time. Compared to last year, burnout is higher in 2021. But along with the recent decrease in hours worked, percent of time experiencing burnout also dropped slightly in Q3.

Despite the **increased awareness** surrounding well-being in the legal industry, data reveals that true, impactful **change has been minimal**—if any. For Q3, nearly half (48%) of respondents reported 'no change' to their well-being over the past quarter, and an additional 35% reported that their well-being has actually decreased.

While these numbers paint a rather bleak picture of well-being in the legal industry, **change is possible**.

In our third iteration of the survey, we asked attorneys about the types of well-being programs offered at their organization, and found that 79% had access to at least one—and the majority of attorneys who tried them found them to be helpful. However, engagement was low: Fewer than 30% of attorneys said they actually used any of the programs offered.

Well-Being Programs Are Found to Be Helpful Despite Low Usage



Source: Bloomberg Law Attorney Workload and Hours Survey (Q2 2021) Respondents were asked to select all that apply. Additional programs were surveyed but not included in this graphic

In spite of these low usage figures for attorney well-being programs, legal employers should not be dissuaded from offering them—or from encouraging lawyers to use more of them. Survey results showed that attorneys whose employers offered at least one well-being program had slightly higher job satisfaction and slightly lower burnout than attorneys who didn't have access to any well-being programs at work at all. They also showed higher job satisfaction and lower burnout among attorneys who used more than one program than those who used only one.

In addition to programming, the **need for diversity, equity, and inclusion** in work culture is more apparent than ever. Leadership needs to make it clear that **DEI efforts are recognized and prioritized**. By creating a welcoming environment for employees of all backgrounds, organizations foster an inclusive environment that tears barriers down, builds individuals up, and ultimately, leads to a stronger foundation for well-being.

With the onset of the "**Great Resignation**", we've seen a shift in people's priorities when it comes to their jobs. **Forty-five percent** of attorneys in our Q2 survey said they would leave their current role in favor of a role that offers a better work-life balance. In contrast, salary and compensation was only the fourth most-cited reason to leave for another job, revealing that pay is losing its stronghold on attracting new talent. By setting that precedent, attorneys and job seekers can redirect the legal industry's culture toward a much healthier reality.

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ANALYSIS

Let Decency Guide the Legal Field's Return to Office

by Francis Boustany
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Nov. 1, 2021

Law firms and legal departments tend to treat lawyers well from a monetary perspective, but they sometimes let well-being and self-care take a back seat to productivity and profit. As more organizations return to office (RTO) in 2022, law firms and legal departments should consider using the "decency quotient"—as opposed to just a profit-based model—to help guide their RTO policies and procedures, DEI frameworks, and well-being improvement activities.

Though the decency quotient as a management model predates the pandemic, its tenet—that leadership's mission should be driven by empathy, with a focus on caring for employees and creating a positive workplace where they can feel respected and valued—is as important as ever in the upcoming year as organizations return to the office and face new as well as old challenges. As organizations look for strategies to guide their operations in 2022, this management model could be used to create a more positive work experience that benefits each and every employee.

The Decency Quotient's Rising Relevance in Law

As the world strives to return to some semblance of normalcy from the pandemic, and people shuffle back into the office (or continue to stay home, for that matter), organizations should operate with decency to optimize their employees' new work life. To do this, they should pay extra attention to their employees' needs and strive to make changes in operations, workflows, and practices that improve employee experience.

Recently, Harvard Business Review described how Mastercard's leadership used the decency quotient to improve the lives of employees by providing better benefits, such as improved leave packages and retirement investment options, all while transforming aspects of their business and trying to boost competitiveness.

Law firms and legal departments can take a page out of this playbook and employ the decency quotient—or, more simply and directly, employ decency—to address some of the new and ongoing challenges they will face in 2022, such as preventing RTO pains; creating successful and meaningful diversity, equity, and inclusion programs; and facilitating greater employee retention.

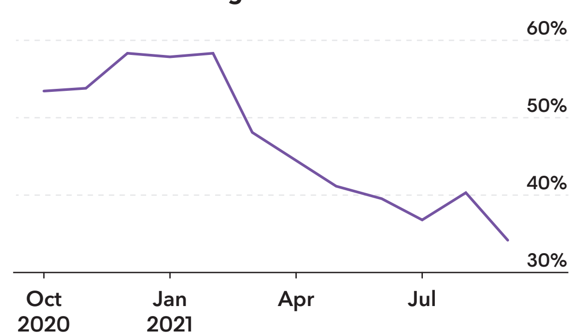
Using Decency to Guide Return-to-Office

As the pandemic (hopefully) subsides in 2022, many offices may return to hybrid or full-time in-office work, if they have not done so already. Law firms and legal departments can make this transition easier by leading with decency.

Employees are now used to working from home and having more flexibility. It allows for easier child and family care, reduced time spent commuting, more freedom to work when and where it is most convenient, and other tangible benefits to employees. All of this risks coming to an end under a RTO mandate (or a more complete RTO for organizations that are currently hybrid).

And this return to the office is already on the way. Bureau of Labor Statistics data trends show that two-thirds (66%) of legal field employees were working in the office as of September, up from 60% in August.

Percent of the Legal Field Teleworking Due to the Pandemic



Source: U.S. Bureau of Labor Statistics

While organizations may hale all of their employees back into the office at some point, they can do so in a way that shows that they care and launch new policies that retain some of the benefits that employees had in a remote environment. While these policies will look different for each organization, the overall plan should be the same: Consider the ways employees benefited from the work-from-home setup and try to provide them with these benefits to the extent possible.

For example, from a Covid perspective, they could promote safety and security by providing virus testing and contact tracing for employees in the office and ensure that employees have a clear policy to follow if they are not feeling well, such as letting them work from home or providing more sick time. This can help to quell some of the virus-related concerns as employees return to the office.

Additionally, organizations can provide more flexibility, such as allowing their employees—within reason—to work from home whenever they need to or granting them more time off (or flex time) to tend to personal, family, or medical needs.

Decency: A Root of DEI Program Success

DEI will likely continue to be a relevant topic in the legal industry (and others) in 2022. Operating an organization with decency as a guide can help organizations promote DEI initiatives and successfully achieve diversity, equity, and inclusion goals.

Decency can form a cornerstone for DEI initiatives, since considering the best interests of all employees is central to DEI. The following are examples of how decency fits into each of the major components of DEI initiatives:

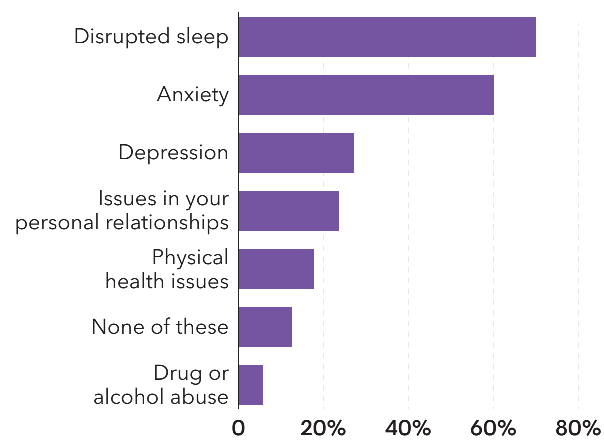
- From a **diversity** perspective, decency helps to ensure that people in different groups feel at home within an organization and that they are represented across the organization.
- From an **equity** perspective, decency helps to ensure that all employees are treated equally—not just in workflow processes and procedures, but also in financial, business, and advancement opportunities.
- From an **inclusion** perspective, decency helps to create a flexible workplace, promote cohesion, and instill a culture that welcomes all employees, makes them a part of the team, and provides them the potential to work at any level or area of the organization.

Decency Can Elevate Well-Being Issues

Lawyers often experience well-being issues, many of which stem from work pressures. Organizations may not be able to alleviate all well-being challenges that lawyers face, but if they lead with decency, they can help to prevent some of the common work-related roadblocks to well-being.

Bloomberg Law's Q3 2021 Workload and Hours Survey asked respondents to select what work-related issues they faced, and the top responses were disrupted sleep (70%) and anxiety (60%).

Most Lawyers Experience Work-Related Disrupted Sleep, Anxiety



Source: Bloomberg Law's 3Q2021 Attorney Workload and Hours Survey. Additional responses were surveyed but not included in this graphic. Respondents were asked to select all that applied.

Organizations can help to address these well-being-related issues by leading with decency. Organization should consider the following:

- Provide additional well-being services and resources as well as time to utilize them.
- Implement policies to help lawyers unplug from work.
- Adequately staff projects to help reduce stress and pressure on lawyers.
- Implement well-being-related policies and practices that allow for better work-life balance.
- Offer hybrid or work-from-home models for those that need or request them.
- Provide ergonomic office furniture and items to improve physical well-being.

Employers should also ask for lawyers' input on actions that they can take to improve well-being. Soliciting this input communicates that an organization cares about its lawyers, and following through and implementing changes based on this input could improve well-being and overall morale.

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Bloomberg Law has free resources available in our ***In Focus: Lawyer Well-Being*** *page, including links to assistance programs.*

ANALYSIS

Law Firm Diversity—How It's Going, and a Way Forward

by Molly Huie
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Nov. 1, 2021

Last week, Bloomberg Law debuted our **DEI Framework**, a listing of law firms that meet or exceed an established threshold of diversity, equity, and inclusion in their firm. Standardized disclosure of diversity-related data allows firms to better attract and retain talent, and allows companies looking to procure legal services to easily compare law firms from a supplier diversity standpoint.

Data from this year's submission process gives some insight into how the legal industry is doing in the DEI space. Spoiler alert … not great. Not terrible, either, but there is definitely room to grow—and we have at least one idea on a way to propel diversity initiatives forward.

Diverse Recruitment Is Working, But Leadership Lags

Bloomberg Law's DEI Framework is broken into six main pillars:

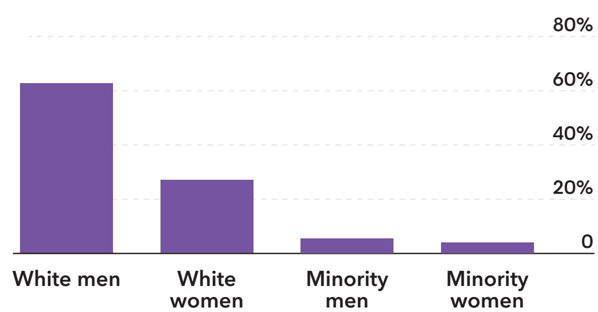
- Firm Demographics;
- Leadership and Talent Pipeline;
- Recruitment and Retention;
- Business Innovation and Strategy;
- Marketing; and
- Diversity & Inclusion in the Community.

Looking at the overall pillar scores provides a clue into the progress of DEI efforts in law firms. Each pillar is scored from 0–100, with points earned for exceeding industry standards according to publicly available data from the **American Bar Association** and the **National Association for Law Placement Inc**, as well as for endorsing various diversity, equity, and inclusion policies and benefits listed in the survey.

While there is definitely room to improve, the firms that submitted data this year are generally doing well across four of the pillars: recruiting a diverse pool of new attorneys and creating and implementing retention practices; including diversity and inclusion in their business strategies; marketing themselves; and contributing outside of their firms as champions of diversity in their communities. Scores for firm demographics are a bit more dispersed, but overall, firms hover around industry averages for most employee categories.

However, leadership and talent pipeline scores are notably lower. Nine out of 10 top leaders (either CEO or managing partner) are White and 81% of top leaders are male. Of attorneys who lead firm-wide practice groups or departments, 27% are White women, 6% are minority men, 4% are minority women, and the remainder are White men. Leadership is a lagging indicator—it takes an attorney years of building up their personal brand before they are considered for leadership positions. Hopefully, the legal industry will start seeing more diversity in top positions as those attorneys being recruited now receive the support and mentorship they need to meaningfully advance their careers.

Attorneys Leading Firm-Wide Practice Groups Are Mostly White Men



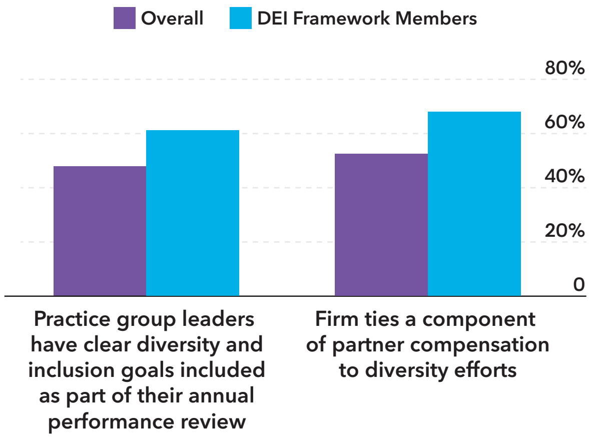
Source: Bloomberg Law's 2021 Diversity, Equity, and Inclusion Framework.

Put Your Money Where Your Values Are

Nine out of 10 firms that submitted data for consideration for the DEI Framework listing have a public statement expressing their commitment to diversity and inclusion. And eight out of 10 have a Chief Diversity Officer or equivalent position. This speaks well to firms' *intentions* regarding diversity, equity, and inclusion, but what really moves the needle? Financial incentives.

Overall, about half of firms that submitted data this year say that their practice group leaders have clear diversity and inclusion goals included as part of their annual performance review, and a similar number of firms say they tie a component of partner compensation to diversity efforts. However, among only the 28 firms who successfully made it onto our 2021 DEI Framework list, those numbers go to up to 61% and 68%, respectively.

Member Firms More Often Tie DEI Efforts to Goals and Compensation



Source: Bloomberg Law's 2021 Diversity, Equity, and Inclusion Framework.

Having some monetary link to diversity and inclusion efforts seems to create noticeable change. That said, the law protects all workers from discrimination based on demographic characteristics like race and gender, even if those employees don't help a company meet its diversity goals. Monetary incentives that are too appealing or poorly tailored can encourage employers to skip the hard work of DEI—better recruiting and retention practices, creating an inclusive and welcoming culture, and providing opportunities—in favor of hiring decisions that are both unfair and illegal. Doing the hard work really is the *effort* firms should be rewarding, and this effort can help create the kind of work environment where a diverse workforce can thrive.

For more information about the 2021 DEI Framework, including the listing of member firms and overall aggregate report, as well as information on the 2022 DEI Framework timeline, visit **pro.bloomberglaw.com/DEI**.

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ANALYSIS

Mandatory Cybersecurity CLE Credits—At a Bar Near You?

by Robert Brown
Legal Analyst, Bloomberg Law
Nov. 1, 2021

A lawyer's **duty of confidentiality** includes taking reasonable steps to protect a client's electronically stored information. The state of New York has taken a small yet bold step that could lead to lawyers better understanding their obligation by seeking to add cybersecurity to its continuing legal education (CLE) credit requirements. Considering the rise in law firm and corporate data breaches worldwide, coupled with lawyers' concerns about the security of their own legal technology, I expect other state bars to follow New York's example—and law schools to start teaching students more about cybersecurity as well.

The Empire State and Cyberattacks

In June 2020, the New York State Bar Association (NYSBA) approved its Committee on Technology and the Legal Profession's report recommending **one cybersecurity CLE requirement** for New York lawyers, pending final approval by the New York CLE Board. This was probably spurred initially by New York's **SHIELD (Stop Hacks and Improve Electronic Data Security) Act**, which imposed tougher data security requirements for all New York businesses (including law firms) hosting private citizen data.

The nature of work-from-home arrangements that make it possible for lawyers to practice from the comfort of their kitchen tables on laptops, tablets, and mobile phones further underscores the need for mandatory cybersecurity CLE credits. But truth be told, there's probably not a more convincing reason than actual cyberattacks—on **law firms** and **legal departments** alike—to convince a state bar that it should help ensure its lawyers are better informed. And make no mistake about it: Cybersecurity concerns are anything but novel to the New York Bar. In 2014, a **NYSBA ethics opinion** clearly stated that cybersecurity was a major concern for lawyers because of criminal elements targeting client data such as "trade secrets, business plans and personal data." Unfortunately, leaving it to individual lawyers to take the initiative and learn cybersecurity on their own, knowing full well that they are scrambling to meet deadlines and billable hour requirements in addition to their extra-curricular activities (like family obligations and well-being needs), seems to be an exercise in futility—according to Committee Co-Chairman Mark A. Berman, making cybersecurity training voluntary has proven to be **simply ineffective**.

ABA Guidance and Industry Cybersecurity Concerns

Although the NYSBA may be the first state bar to take an official step to ensure lawyers have some cybersecurity acumen, the American Bar Association (ABA) formally addressed this very topic four years ago. It emphasized data security knowledge and even **outlined steps** for lawyers to protect client information from the growing threat of cyberattacks.

Cybersecurity Threats Weigh Heavily on Lawyers' Minds

Percentage of Lawyers Somewhat or Very Concerned About Ransomware

Source: Bloomberg Law's 2021 Legal Technology Survey. Respondents were asked how concerned their respective organizations are about ransomware attacks. Percentages were rounded. Respondents who chose "Not Sure" were excluded from the analysis.

Independent of ABA guidelines, lawyers are nonetheless deeply concerned about cybersecurity—particularly **ransomware attacks**. According to **Bloomberg Law's 2021 Legal Technology Survey**, the vast majority of all law firm respondents and 96% of all in-house respondents reported that their organizations are either somewhat or very concerned about ransomware attacks.

Both the ABA's recommendations and the fact that most lawyers harbor data security concerns demonstrate that the NYSBA is on the right track in recommending mandating cybersecurity training. But what about other state bars? Shouldn't they take the initiative and mandate that their lawyers take cybersecurity training as well?

The Need for Cybersecurity-Savvy Lawyers Nationwide

Data breaches and cybersecurity attacks occur not just nationally but globally, so cyberattack incidents against law firms and organizations are by no means unique to New York. In fact, according to a 2020 Legal Technology Survey Report administered by the ABA, **29% of law firm respondents** have experienced some form of data breach (a 3 percentage point increase from the prior year).

As more law firms and corporations fall victim to high-profile cybersecurity breaches and exorbitant ransomware payments, other state bars will likely consider mandatory cybersecurity CLE credits as well. Granted, this is not to suggest that all lawyers will become tech law experts. But it does mean that by taking these courses, they will gain a better understanding of the threats posed by social engineering, malware, ransomware, phishing, and other cybersecurity perils.

Prepping the Next Generation of Lawyers

Offering more cybersecurity courses and training, both to students who want to learn just the basics and to students who wish to make cybersecurity and privacy law practice a career, will keep law schools competitive and prepare law graduates to hit the ground running after taking the oath. Institutions such as the University of Maryland's Francis King Carey School of Law already have **programs** specifically geared towards teaching law students the nuances of data security, and this trend will continue.

Cyberattacks are **on the rise**, and it's only going to get worse. As encouraging as it may be that New York has taken action to make lawyer cybersecurity proficiency no longer an option but an obligation, it's also fitting that law schools are already helping to develop more cybersecurity-trained future lawyers to meet the demands of legal practice in the era of big data. The legal industry will be sure to keep a close eye on the success of the Empire State's initiative as other state bars eventually follow suit.

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*Bloomberg Law subscribers can find related content on our **Practical Guidance: Privacy, Cybersecurity & Technology** page.*

ANALYSIS

#Trending in 2022 for In-House Legal Departments

by Karen Miller-Kuwana
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Nov. 1, 2021

The Covid-19 pandemic has rapidly transformed the legal industry. With the start of 2022 approaching, in-house legal departments can expect to see the continuation of many pandemic-era trends, including the growth of legal operations, the transition of in-house legal departments from legal advisers to strategic business partners, the accelerated use of legal technology, and the importance of managing outside counsel and legal spend.

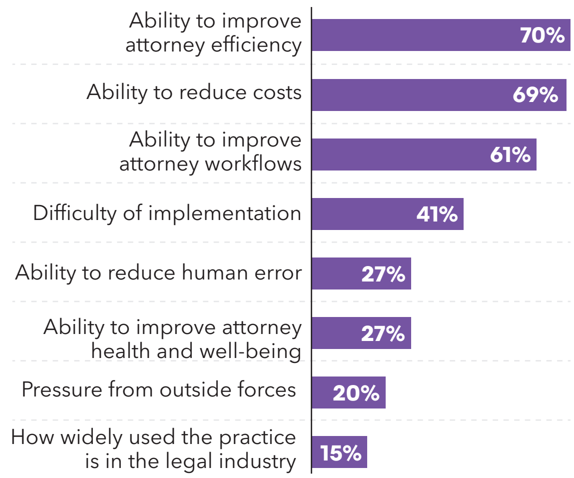
The Growth and Strategic Importance of Legal Ops

Bloomberg Law defines "**legal operations**" as a multidisciplinary approach to managing a legal organization or department that aims to improve its efficiency, productivity, and profitability. In practice, this translates to managing the operations of the in-house legal department to improve workflows, automate processes, standardize interactions with outside counsel, and improve the in-house legal department overall.

Although the roles and responsibilities can vary, legal operations professionals are increasingly being integrated into an organization's strategy and business objectives. In fact, according to the Association of Corporate Counsel's 2021 **survey of chief legal officers** (CLO), 38% of CLOs reported that their department's most important strategic initiative fell within the area of legal operations, almost triple the percentage who selected any other area.

Beyond this strategic importance, legal department lawyers in Bloomberg Law's **2021 Legal Operations survey** most often reported the ability to improve attorney efficiency, reduce costs, and improve workflows as primary considerations when deciding which legal operations practices to implement. The ability to ease implementation, reduce human error, and improve attorney health and well-being were also selected as primary considerations.

Primary Considerations When Implementing Legal Ops Practices



Source: Bloomberg Law 2021 Legal Operations Survey. Law firm respondents were excluded from this graphic. Additional responses (including "Not Sure" and "Other") were surveyed but not included. Respondents were asked to select all that applied.

The 2021 ACC CLO survey results also reflect the rapid growth of legal operations. More than six out of 10 legal departments (61%) reported that they employed at least one legal operations professional in 2021—and that figure has nearly tripled since 2015. The survey further reported that 21% of legal departments employed at least four legal operations employees, and 13% of CLOs said they plan on hiring legal operations staff in the year ahead.

This increase is similarly reflected in the Corporate Legal Operations Consortium's **2021 "State of the Industry" report**, which, for the second year in a row, reported that 40% of respondents have increased the number of full-time legal operations professionals.

From Legal Adviser to Strategic Business Partner

In-house legal departments have evolved from a narrowly focused, reactive legal adviser and risk manager to a robust strategic adviser, proactively participating in overall business operations and decision-making. In-house departments are increasingly involved in advising executive and board leadership on issues such as revenue-generating initiatives, labor and employment matters, corporate social responsibility, and regulatory compliance.

Results from the 2021 ACC CLO survey confirm this evolution. CLOs reported that although they spend, on average, 28% of their time providing legal advice, they also spend a sizeable amount of time on board matters and governance issues, contributing to strategy developments, and advising other executives on non-legal issues.

Seven out of 10 CLOs also reported that they are almost always asked by executive leadership for input on business decisions.

With this transition in progress, in-house legal departments can expect to focus more of their resources on those issues—according to the survey—that are most important to the business overall (cybersecurity, regulation/compliance, and data privacy) or that are likely to cause the biggest challenges for their organizations (industry-specific regulations, data protection privacy rules, political changes, and mergers and acquisitions).

Moving forward as strategic partners, in-house legal departments will also be expected to prioritize **diversity, equity, and inclusion** (DEI) programs and **environmental, social, and governance** (ESG) initiatives, as these issues are becoming of critical importance to organizations.

The Accelerated Use of Legal Technology

The Covid-19 pandemic and associated shift to a remote or hybrid work environment greatly accelerated the need for **legal technology**, with video conferencing, virtual hearings, electronic document sharing, and e-filings becoming the norm. And, from the looks of it, this digital transformation is here to stay, with in-house departments planning to invest in new legal technology solutions. Indeed, according to **Gartner, Inc.**, legal technology budgets for in-house legal departments will increase threefold, to approximately 12%, by 2025.

Legal technology that automates manual and time-consuming legal processes and facilitates remote interactions is expected to be a top priority in the coming year for in-house legal departments. Recent surveys, including the Bloomberg Law **2021 Legal Technology Survey** and the 2021 ACC CLO survey report that in-house departments are planning to invest most heavily in contract management, matter management, records management, document management, e-signature, and e-billing software.

Managing Legal Spend and Outside Legal Counsel

Like other business units, in-house legal departments are often judged on their financial performance, and many are under increasing pressure to find ways to manage their spending more judiciously and use **performance metrics** and bill review measures to manage outside legal counsel spend.

Bloomberg Law's **2021 Legal Operations Survey** confirms the focus on metrics to better manage legal spend. Bloomberg Law surveyed more than 150 in-house lawyers, and 65% reported that their organization has implemented or is planning to implement metrics to measure vendor or outside activities, while 70% reported the same for metrics to measure efficiency. The top three metrics (selected by more than 80% of the respondents) were: spend in the aggregate (total monthly, annually, year over year), vendor/attorney billing rate (on average), and spending by project/matter/task.

The importance of metrics was echoed in the 2021 "State of the Industry" report, in which 27% of participating legal departments reported that they formally review outside counsel performance, and an additional 47% reported that they want to implement such formal review processes.

In-house legal departments are also expected to cut unnecessary costs by implementing **alternative fee arrangements** (AFAs). According to Bloomberg Law's **2021 Legal Operations Survey**, in-house legal department respondents reported that 21% of their legal work, on average, is performed under an AFA, and that cost savings, cost/revenue certainty, and general efficiency were the main drivers in their use of AFAs.

Outsourcing of legal work to Alternative Legal Service Providers (ALSP) and shifting more legal work in-house (to both in-house attorneys and legal operations employees) likewise are expected to continue as in-house legal departments tighten their financial belts and look for lower costs and efficiencies.

This change in the balance of work between outside counsel and in-house attorneys/ALSPs is evidenced in the 2021 "State of the Industry" report. In this report, 21% of respondents reported that they shifted more work to ALSPs (vs outside law firms) in 2020 than in 2019. Thirty-nine percent of respondents also reported that they moved more legal work in-house in 2020 than in 2019.

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ANALYSIS

Lit Finance Complexities, Opportunities on the Rise

by Annie Pavia
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Nov. 1, 2021

In the recent years, litigation finance has been on a trajectory toward becoming a more widespread practice in the legal marketplace. In keeping with predictions, litigation finance—in which a third party finances a lawsuit in exchange for a portion of proceeds in the event of a winning case—appears to be gaining acceptance among big legal market players, including top law firms.

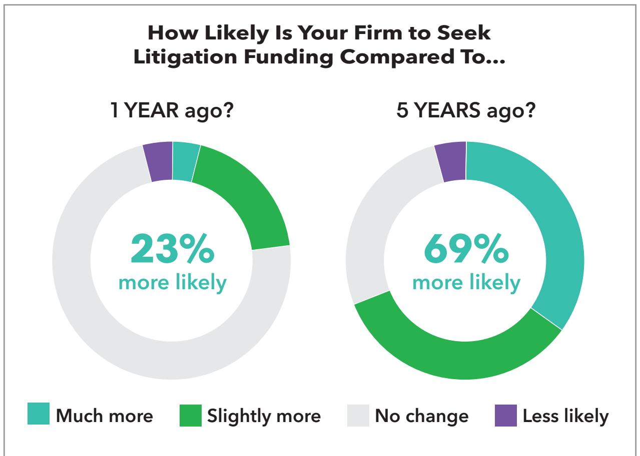
What's more, results just in from Bloomberg Law's 2021 Litigation Finance Survey show that the litigation finance industry has emerged from the pandemic and economic downturn seemingly unscathed—and possibly even strengthened: The majority of litigation funders (56%) reported that their business increased even in the middle of the economic downturn last fall. And a slightly larger percentage (59%) said they have more business now than they did before the downturn began.

2022 will bring further growth and development to the litigation finance industry, including a more public embrace of litigation finance by law firms, diversification of market players, and further exploration of legal and regulatory changes.

Growing Acceptance by Law Firms

In the span of a few years, litigation finance has gone from a concept that many law firm lawyers had either never heard of or viewed with skepticism to a tool that is generally accepted, if not warmly embraced, in the legal industry.

Results from Bloomberg Law's 2021 Litigation Finance Survey show that 69% of lawyers who are interested in or have used litigation finance are more likely to seek funding now than they were five years ago, and 23% are more likely to seek it now than they were just one year ago.



Source: Bloomberg Law Litigation Finance Survey 2021

Earlier this year, Willkie Farr & Gallagher became the first big law firm to publicly announce a major litigation funding deal. In a sign of the legal industry's acceptance of litigation finance as a mainstay of the legal landscape, Willkie and Longford Capital entered a pact to offer $50 million in litigation financing to clients of the law firm. Peer pressure, along with the possible influence of disclosure rules on these decisions, may mean that 2022 will see more publicized deals or relationships between law firms and funders.

Of course, in a social and political climate that is more attuned to DEI concerns than ever before, firms and companies will want to be careful about who they are seen partnering with. So, it will not be surprising to see more litigation finance companies launch DEI initiatives or programs to do the right thing—and because it's good for business.

More Players, More Games

As the litigation finance industry matures, the market is seeing players enter beyond traditional, single-focus litigation finance firms. Multi-strategy investors, many with a dedicated litigation finance desk, have been getting in on the action where cases have large potential returns. Insurance companies are also angling for a slice of potential profits in the litigation finance space. For instance, some insurers have started offering judgment preservation insurance, which funders can use to shore up their investments in single-case or portfolio deals, thereby assuring investors of reliable returns. While there is room for insurers and litigation funders to team up, there is also the prospect of competition: Law firms that take cases on a contingency basis could insure their cases in the same way, and potentially undercut the need for litigation finance.

2022 will continue to bring more types of investors and products to the litigation finance space. As investment types diversify, it's possible that deal terms will become more competitive, and that will incentivize more claimholders and law firms to jump on funding opportunities.

Legal & Regulatory Developments Inch Along

When we **first looked** at the litigation finance space two years ago, we asked whether mandatory disclosure was on the rise. Although the pace is slow, changes continue to happen on that front. The U.S. District Court for the District of New Jersey amended a local rule in July to **mandate** the disclosure of third-party financing in any litigation. The court joins the Northern District of California in enforcing this requirement via local court rule, although the latter only requires disclosure in class actions.

While a few states have enacted disclosure laws, state laws also remain the exception, not the rule. It is possible that 2022 will see courts' or legislatures' interest in mandatory disclosure pick up steam; but at the current pace, it is by no means a given.

On the other hand, some states and bar associations are showing interest in loosening regulations about law firm ownership. Specifically, some are considering rule changes that would allow firm ownership by non-lawyers, a move that many speculate would draw investment in firms by litigation finance companies.

While **Arizona** made this rule change in 2020, Utah in 2021 expanded its "regulatory sandbox" timeline from two years to seven years. This will allow new business models for legal services, including nonlawyer ownership, to try their hand in the state until at least 2027. **Florida**, New York, and California are also exploring new possibilities for regulating law firm ownership models. The Washington Courts Practice of Law Board has presented to the state Supreme Court a **Blueprint for a Legal Regulatory Sandbox** to explore the idea as well. And the Chicago Bar Association formed a task force to present to the Illinois Supreme Court **recommendations** about the sustainable practice of law, including evaluation of whether Rule 5.4, which prohibits firm ownership by non-lawyers, should be relaxed.

While litigation funders' investment in law firms probably won't happen by 2022, more states and bar associations will explore the idea of relaxing the rules that bar firm ownership by nonlawyers, planting the seeds for direct investment by financers in the future.

Access additional analyses from our Bloomberg Law 2022 series ***here****, including pieces covering trends in Litigation, Regulatory & Compliance, Transactions & Markets, and the Future of the Legal Industry.*

Bloomberg Law subscribers can find related content on our ***In Focus: Litigation Finance*** *page.*

ANALYSIS

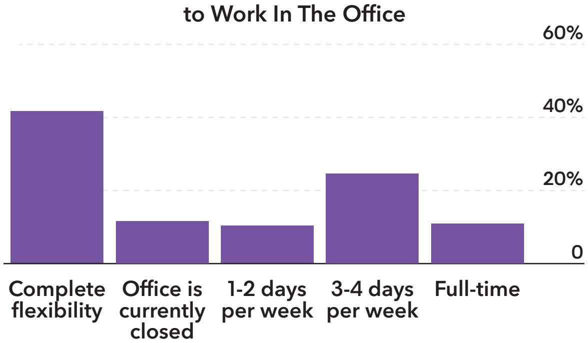
RTO or Work-From-Home? Surveyed Lawyers Weigh In

by Jacquelyn Palmer
Research and Data Analyst, Bloomberg Law
Nov. 1, 2021

We're all aware of the challenges the pandemic has created for workers and their organizations. But for some, the opportunity to work remotely has left them with a lackluster view of returning to the office.

Bloomberg Law's **Attorney Workload & Hours Survey** recently asked lawyers about their organization's current expectations of their employees regarding in-person and remote work, as well as their personal preferences and satisfaction with current work policies. Results show a wide variation among the **remote work policies** that organizations have in place. While more than 40% of attorneys report that they currently have complete flexibility regarding work environment, one-quarter are expected to be in the office at least three days per week, and more than one in 10 are expected to be in the office full-time.

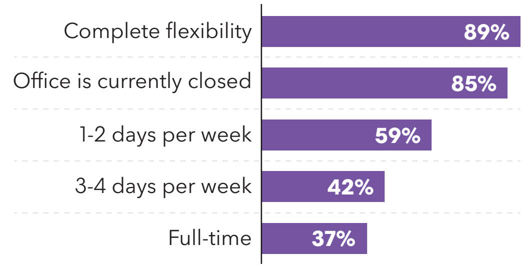
Legal Organizations' RTO Work Policies Vary Widely
Number of Days Lawyers Are Expected to Work In The Office



Source: Bloomberg Law's Attorney Workload and Hours Survey (Q3 2021). Respondents were asked about their organization's current expectations for working in the office.

What do lawyers think of these in-person policies? We asked how satisfied respondents are with their organization's current policies. While three-quarters of respondents overall report they are at least somewhat satisfied with their organization's current policies, the story becomes clearer when looking at how satisfied lawyers are with their remote/in-person work policies that are currently in place: The percentage of respondents who are satisfied decreases as the number of in-person workdays increases. Nearly 90% of respondents who report they have complete flexibility with their work environment are satisfied with their organization's policy, compared to only 37% of respondents who are expected to be in the office full-time.

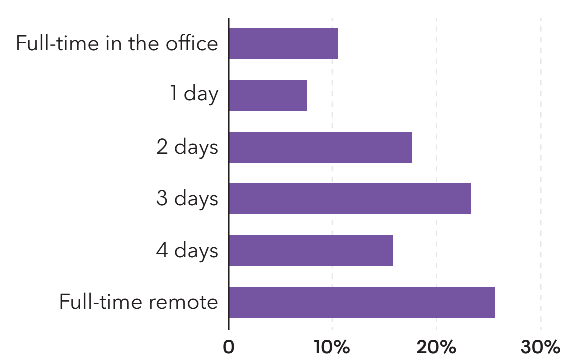
Satisfaction With Work Policies Dwindles as Days In Office Increase
% Satisfied with their current work environment policy



Source: Bloomberg Law's Attorney Workload and Hours Survey (Q3 2021). Respondents were asked about their organization's current expectations for working in the office, as well as how satisfied they are with the current policy. The graphic displays the percentage of respondents who are satisfied with their current policy.

What do lawyers want? That varies widely, too. When asked about their work environment, only 11% of respondents say they prefer to be in the office full-time. One-quarter of respondents prefer to work remotely 1-2 days per week, nearly 40% would prefer to work remotely 3-4 days per week, and one-quarter of respondents prefer to work remotely full-time.

Most Lawyers Prefer To Work Remotely at Least 3 Days Per Week
Number of Days Per Week Lawyers Would Prefer to Work Remotely



Source: Bloomberg Law's Attorney Workload and Hours Survey (Q3 2021). Respondents were asked how many days per week they would prefer to work remotely.

There are many **reasons** why workers have recently been leaving their jobs en masse, including wage increases, better work environments, and better work-life balance. But the work-from-home vs. RTO conundrum is having a huge impact as well. Only time will tell if the Great Resignation will accelerate as organizations continue to **wrestle with RTO initiatives**, or if workers will be more than happy to once again have physical separation between their work and home.

Bloomberg Law will continue to track lawyers' experiences with and attitudes toward their organizations' RTO initiatives in our quarterly Attorney Workload and Hours Survey.

Access additional analyses from our Bloomberg Law 2022 series ***here****, including pieces covering trends in Litigation, Regulatory & Compliance, Transactions & Markets, and the Future of the Legal Industry.*

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