

Hybrid Work Policies: Key to the Recruitment, Retention of Women and Lawyers of Color

The continued uncertainty and anxiety about when lawyers will return to the office and how often they will be expected to work in person has exacerbated the stress for many younger lawyers, especially women and women of color whose young children are not yet eligible for vaccination.

By **Roberta Liebenberg, Paulette Brown and Stephanie Scharf** | October 25, 2021

In the 18 months since the pandemic has required lawyers to work from home, the date for bringing lawyers back to offices has been repeatedly pushed back. Many firms planned on a July 2021 reopening, but as the highly contagious Delta variant has surged, September became the new July, and now many law firms and companies are postponing their return dates until 2022. But that too could change.

The continued uncertainty and anxiety about when lawyers will return to the office and how often they will be expected to work in person has exacerbated the stress for many younger lawyers, especially women and women of color whose young children are not yet eligible for vaccination. Younger lawyers, who are comprised of higher percentages of women and lawyers of color than older lawyers, continue to juggle their professional obligations with childcare and other caregiving responsibilities, while being required to fulfill onerous billable hour requirements that have not been reduced despite the pandemic. Further, many associates are complaining that law firm leaders have failed to provide transparent communications about how often lawyers will be expected to work in the office and what will be done to ensure their health and well-being. One-third of mid-level associates surveyed expressed concern about the safety of returning to the office. See 2021 ALM Mid-Level Associates Survey; Mid-Level Associates Aren't Satisfied With Law Firms' Return-to-Office Plans, American Lawyer by Dylan Jackson, Aug. 23, 2021. In short, lawyers are exhausted, with no clear end of the pandemic in sight. As a result, patience and empathy are waning.

While some law firms have been showering associates with increased salaries and bonuses, 60% of mid-level associates surveyed this year said they would consider leaving their firm for a better work-life balance. As burnout continues to rise among young lawyers, a firm's willingness to provide greater flexibility in where they work may outweigh promises of higher pay. These challenges have engendered extensive discussion surrounding hybrid work policies.

Why have hybrid work policies come to be an issue of such importance for law firms and lawyers? Data from a national survey of ABA members set forth in "Practicing Law in the Pandemic and Moving Forward," as well as other survey data, make abundantly clear that the overwhelming majority of young lawyers, particularly women and lawyers of color, want the flexibility to decide for themselves how often they will work in the office. Indeed, the recent ALM mid-level associates survey found that 78% of respondents prefer a hybrid work schedule. Similarly, a Major Lindsey & Africa study found that more than three times as many partners (the overwhelming majority of whom are white men) as associates are "very eager" to return to the office, and 20% more men than women are "eager" or "very eager" to return to the office.⁵

It is striking that the lawyers who seem most eager to get back to the pre-pandemic norm of a five-day in-the-office work week are male Baby Boomers, who no longer have young children at home and rarely are principally responsible for other types of caregiving. It is not surprising that many of these same senior leaders are the ones extolling the virtues of in-office work and fashioning policies “strongly encouraging” work in the office every day.

Quite often the justification that is offered for full-time office work is that it is supposedly necessary to maintain and build firm culture. But that justification begs the question as to what culture the firm is trying to preserve, and will that culture be an inclusive one in which women and lawyers of color can advance and succeed? Unfortunately, for far too many women and lawyers of color, the culture of their law firms has not been welcoming or equitable.

For instance, the ABA Practice Forward Survey revealed that 52% of women lawyers feel stress at work solely on account of their gender, compared to only 9% of male respondents. Over 47% of lawyers of color reported feeling stressed at work very often or almost all the time on account of their race or ethnicity, compared to just 7% of white lawyers. The intersection of race and gender affects women lawyers of color and, as a result, 54% of women of color respondents experienced stress at work at least sometimes because of their race or ethnicity, compared to 6% of white women and 41% of men of color.

Lawyers of color are reporting jaw dropping high levels of isolation, depression, and anxiety, according to the June 2021 ALM Mental Health and Substance Abuse Survey. That survey found that 61% of Black attorneys reported feeling isolated in their law firms. Of note, 51% of Black attorneys, 49% of Asian attorneys, and 49% of Hispanic attorneys reported that they did not feel their firms provided support for their personal well-being.

Prior to the pandemic, our Walking Out the Door and Left Out and Left Behind surveys showed that women and women lawyers of color have often had to endure unfair treatment and have been denied equal access to significant matters for important clients; business development opportunities; mentors and sponsors; equitable compensation; and promotions to partnership. All too often they have been subjected to double standards and have been incorrectly perceived as insufficiently committed to their careers. This has resulted in disproportionately high rates of attrition for women and women lawyers of color.

The pandemic has highlighted that legal employers have simply failed to build an inclusive and hospitable workplace culture, and therefore it is understandable why many lawyers of color do not want to return to the office full-time, if at all. It is telling that a recent survey of “knowledge workers,” which includes lawyers, found that 97% of Black knowledge workers prefer a hybrid or full-time remote working model, compared with 79% of white knowledge workers. Only 3% of Black knowledge workers want to return to full-time work in the office compared to 21% of white knowledge workers. For many lawyers of color, remote work allows them to reduce the need for code switching; avoid in-person microaggressions; provides a stronger sense of belonging and authenticity; and a greater ability to manage stress and achieve work-life balance.

We are already seeing a huge war for talent, and lawyers are much more willing to move to another firm, particularly if their firm is not implementing hybrid work policies that allow those who use them to achieve success. If firms want to prevent an exodus of their women and lawyers of color, they must devise and implement hybrid work policies and practices that will provide for real workplace flexibility; keep lawyers engaged and connected with the firm and each other; and create a culture in which remote work does not derail a lawyer’s career. They must be willing to learn from and act upon the perception of a lack of belonging by lawyers of color. Best practices for employers should include:

- **Be intentional and transparent.** Be purposeful in ensuring that all lawyers who work remotely have a clear path forward and an equitable opportunity to advance. Policies should be developed and implemented with a broad array of input from women and diverse lawyers to determine the types of hybrid work schedules they prefer, including flexible hours, shorter work weeks, and childcare resources. Developing a hybrid work policy without listening to and incorporating such input will greatly reduce the chances for success.

In a hyper-competitive legal market with extensive lateral movement, the retention of women and lawyers of color will require firms to think intentionally about the development of written, transparent hybrid work policies that will not disadvantage participating lawyers in terms of their assignments, compensation, mentorship, and advancement. It is important for firms to understand the difference between equal and equitable.

- **Develop policies to maintain increased engagement at all levels.** When lawyers work remotely, it is important for them not to feel left out or sidelined, for their own morale and for the benefit of the firm. To keep all lawyers feeling seen and connected regardless of where they work, firms can designate certain days each month for in-person meetings of practice groups, departments, or the entire office. In-person or virtual social events can also be held to promote social interaction, camaraderie, and morale. Firms can arrange one-on-one calls or other forms of “pulse checks” to discuss how lawyers are faring and what the firm can do to help them succeed. Regardless of the specific practices a firm chooses, the key is to develop ongoing activities that are truly inclusive of all lawyers, whether working remotely, in the office, or on a hybrid basis.
- **Use metrics to track results over time.** Carefully track how often women and lawyers of color take advantage of hybrid work policies and their rates of promotion. Make adjustments as necessary. Monitor the types of assignments and client opportunities obtained by lawyers who work mostly from home to ensure that they are not being disadvantaged and are receiving the experiences necessary in order to be promoted. Careful review of performance evaluations is necessary to spot implicit bias and determine whether lawyers who primarily work remotely are receiving more critical comments about their commitment to the firm or effectiveness than those who work in the office. Before the pandemic, those who utilized remote work (overwhelmingly women with young children) were often stigmatized, and it is imperative that this not be allowed to recur. Metrics can also allow a firm to show that hybrid work fosters success for individual lawyers.
- **Provide the necessary technology and administrative resources.** Firms should make it easy for any lawyer to attend group calls, contact administrative personnel, access documents online, and have their own online “office,” meeting rooms, and even a casual space for dropping by to chat. The goal is to create a unified set of experiences for everyone, regardless of where they work. Help lawyers set up an effective home office, with at least a high-speed printer and office supplies. The same resources needed to sustain a business office can be transferred to supporting a home office. Firms can use the substantial rental savings resulting from a diminished need for office space for lawyers working from home to invest in additional technological and administrative support.
- **Actively support hybrid work policies.** Law firm leaders can promote the success of hybrid work by demonstrating their personal support. They can send communications that endorse remote work, and highlight good results or praise the success of a team that includes lawyers working from home. Remote lawyers can often feel disassociated from the rest of their team, and

recognition of their contributions boosts morale and sends a powerful message to others that remote work is valued and can lead to advancement.

Conclusion

The past 18 months have clearly demonstrated that in most instances lawyers can work just as effectively and productively from home as they do at the office. We urge law firms to recognize that many of their young lawyers, particularly women and lawyers of color, have a strong preference for flexibility and the freedom to decide for themselves where to work. Adoption of hybrid work policies that ensure a pathway to advancement and success will allow firms to enjoy a competitive advantage in recruiting and retaining top talent and obtaining business from the many clients who are increasingly looking to retain women and lawyers of color to handle their matters.

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