

## DIVERSITY, EQUITY AND INCLUSION CONSIDERATIONS FOR “WORK FROM HOME” AND RETURN TO WORK”

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COVID-19 and the ensuing changes to work and personal life have impacted everyone, perhaps more dramatically than any single event in our lifetimes, but the challenges presented by this world-wide crisis have not been experienced equally. American Indian, First Nation, Alaskan Native, Hispanic or Latino, and Black Americans have suffered significantly greater rates of illness, hospitalization and death as a result of COVID-19.<sup>2</sup> While other underlying conditions that affect health, including pre-existing health conditions, socioeconomic status, access to health care, and exposure to the virus related to occupation (i.e., frontline, essential, and critical infrastructure workers) correlated to race and ethnicity may contribute to these differences, the fact remains that diverse attorneys are far more likely to have lost loved ones to COVID-19, or to have faced the financial and emotional burdens of caring for close friends or family impacted by this disease.

Data also suggests that men may be more severely impacted by COVID-19 mortality, though gender is seemingly not as dramatic a variable as race/ethnicity and socioeconomic class.<sup>3</sup> The indirect effects of COVID-19, however, disproportionately impact women. By one estimate, women’s jobs make up 39 percent of global employment, but account for 54 percent of overall job losses during COVID-19; data analytics would have predicted that woman would make up 43 percent of job losses in the United States, but instead, unemployment data show that women in fact made up 54 percent of job losses by July 2020.<sup>4</sup> Women’s employment is dropping at a faster rate, even accounting for the fact that men and women work in different sectors.<sup>5</sup>

The ABA’s “Practicing Law in the Pandemic and Moving Forward,” (2021),<sup>6</sup> a national study of more than 4,200 attorneys working in private practice and corporate settings as lawyers (i.e., in jobs requiring a law degree) more specifically identifies some of the different experiences among attorneys in various groups. Some key findings:

- **The pandemic has exacerbated the already-disproportionate child care burden on women.** While 5% of male respondents reported taking on more child care responsibilities as a result of the pandemic, nearly three times as many women (14%) reported the same increase in responsibilities.<sup>7</sup>
- **COVID-19 is causing many women to consider part-time schedules.** While 35% of all lawyers are thinking more often about working part-time in response to the stresses associated with COVID-19, women with children aged 5 or younger (53%) and children aged 5-13 (41%) were significantly more likely to be considering decreased work schedules.<sup>8</sup>
- Compared to pre-pandemic experiences, more than half of attorneys of color reported feeling more overwhelmed with all of the things that they have to do; think their day never seems to end; feel it is harder to keep work and home separate; and more frequently find work interrupted by family and household obligations. While white attorneys frequently experienced the same feelings, none of those negative feelings were reported by half or more of white attorneys surveyed. The most frequently-mentioned stressors among white attorneys were missing seeing people at the office and feeling disengaged from their firm or employer.<sup>9</sup>

The pandemic also has created disproportionate challenges for attorneys with disabilities, attorneys who identify as LGBTQ+, and more senior attorneys.<sup>10</sup> For example, certain technologies related to work at home, such as videoconferencing, required additional adaptation for attorneys with disabilities.

### The Paradox of Advantages and Disadvantages of Remote Work

Moving Forward also identified significant differences between attorneys of color and white attorneys related to stress at work related to race and ethnicity. While these stressors may or may not be related to the pandemic or various events occurring during the pandemic, the survey showed that while fewer than 7% of white lawyers felt stress at work because of race or ethnicity, 47% of attorneys of color reported feeling this stress—18% reporting feeling this stress either almost all of the time or very often.<sup>11</sup>

1 Any views expressed in this work are the author’s, and are not statements of Dickinson Wright PLLC.

2 CDC, Risk for COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (accessed September 2, 2021). The data shows, for example, that Black Americans experience COVID at 1.1x the rate of white Americans, but are hospitalized 3.4 times more frequently, and are 2.4 times more likely to die of the disease. Similarly, the hospitalization rate of Hispanic and Latino persons is 2.8 times that of white Americans, and are 2.3 times more likely to die of the disease.

3 See, e.g., CDC, COVID Data Tracker, Deaths by Sex (<https://covid.cdc.gov/covid-data-tracker/#demographics>, accessed September 2, 2021), showing approximately 54% of COVID deaths reported in the U.S. occurred among men. Unfortunately, data collection has not been well-differentiated by gender, and as a result, little has been done to accurately control for pre-existing health conditions and lifestyle (drinking and smoking) and environmental factors, either in global or United States data.

4 McKinsey Global Institute, “COVID-19 and Gender Equality: Countering the Regressive Effects (July 15, 2020) (accessed at <https://www.mckinsey.com/featured-insights/future-of-work/covid-19-and-gender-equality-countering-the-regressive-effects>).

5 *Id.*

6 Accessible at <https://www.americanbar.org/content/dam/aba/administrative/digital-engagement/practice-forward/practice-forward-survey.pdf>. For purposes of this analysis, this report will be referred to as “**Moving Forward**.”

7 Moving Forward at 12.

8 *Id.* at 18-19.

9 *Id.* at 17-18.

10 Moving Forward at 2; Blank, P., Abdul-Malak, Y., Adya, M., Hyseni, F., Killeen, M., and Altunkol Wise, F., “Diversity and Inclusion in the American Legal Profession: First Phase Findings from a National Study of Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+,” Univ. of the District of Columbia Law Review (Spring 2020) (accessible at <https://digitalcommons.law.udc.edu/udclr/vol23/iss1/3/>)

Similarly, there is a significant gap between men and women's perceptions of stress at work due to gender. More than half (52%) of women surveyed reported feeling stress at work due to their gender, while only 8% of men reported the same stress—with only 3% of men reporting feeling this stress frequently, compared to 16% of women.<sup>12</sup>

Given these stressors, some authors report that remote work has provided some relief from some work-related race stresses:

[A]mong employees who have been working remote, white employees are seven times more likely than Black employees to report being interested in returning to on-site work (21% vs. 3%). A big reason is that Black workers face a more negative in-person work environment: When working from home, 64% reported being better able to manage stress, and 50% reported an increase in feelings of belonging at their organization.<sup>13</sup>

Of course, notwithstanding these overall responses, each individual may perceive their circumstances somewhat differently. Not all women or mothers have experienced greater stress during COVID. Not all attorneys of color have found remote work to be more difficult. Some disabled attorneys were already well-equipped to handle work from home. Some LGBTQ+ attorneys are experiencing less, not greater, stress in working from home.

## Potential Approaches/Strategies

Moving Forward provides a number of suggestions for organizations and individuals. The recommendations for organizations include:

1. **Insist on Leadership That Is Engaged, Transparent and Accountable.** Moving Forward suggests that the cusp of the post-pandemic era is the time for leaders to rethink the structure, policies and practices of their firm, department or organization, to assure that they align with the firm's values. A variety of policy changes are going to be needed; how you communicate them will make a huge difference in how they are received.
2. **Make Decisions Which Will Have a Real Impact on Diversity, Equity and Inclusion.** Recognizing that there are striking differences between how various groups of lawyers view the "new" practice of law, and that some prior discrepancies have continued or been exacerbated during the pandemic, deploy as many strategies, benchmarking tools, or other tools to make meaningful progress in assuring that everyone in the organization can be successful.
3. **Have Frequent, Transparent, and Empathetic Communications.** Supervising attorneys, department chairs and practice group leaders should reach out to team members to evaluate whether unspoken accommodations are needed, and whether morale is declining. It doesn't hurt for leaders to express their own challenges.
4. **Create Clear Written Policies About Work Expectations.** Consider adopting standards as to what constitutes a working day, and what levels of responsiveness and communication are expected. Help younger attorneys and staff understand how to prioritize competing work assignments.

<sup>11</sup> Moving Forward at 32-33.

<sup>12</sup> Moving Forward at 33.

<sup>13</sup> Williams, Joan C., and Rachel M. Korn and Mikayla Boginsky, "Don't Lose the Democratizing Effect of Remote Work," *Harvard Business Review* (August 4, 2021). See also, Barrero J., Bloom, N., and Davis, S., "Don't Force People to Come Back to the Office Full Time," *Harvard Business Review* (August 24, 2021) (reporting that firms that don't offer weekly work-from-home days are at risk of losing employees, particularly people of color and highly educated women with young children).

5. **Take the Long View About Retaining Lawyers Through Part-Time and Flex-Time Policies.** Allow attorneys who want or need non-traditional paths to succeed.
6. **Use Metrics to Measure the Success of Policies, Practices, and Efforts to Implement Change in the Workplace.** "What gets measured is what gets done"—especially if partner compensation is tied to a particular metric. Use data to assess whether intended policies are being fully implemented, or only talked about.
7. **Reassess Compensation Systems.** Make sure that your compensation system reinforces the value of building core competencies for the future.
8. **Provide Greater Parental Resources and Support.** Both formal policies and informal encouragement can be helpful to struggling parents.
9. **Strengthen Wellness and Mental Health Programs.** Practicing law has always been difficult and stressful; now it is even more so. Help all employees find a better level of mental health during these difficult times.
10. **Provide Excellent Technical and Administrative Support for Remote Work.** There are many, many steps where technology can break down in a remote work routine. Try to make as many of those steps as possible trouble-free for each employee.

Recommendations for individuals included in the Moving Forward report include:

1. **Set Realistic Expectations for Yourself and Others Around You.** Adjust your goals for what can reasonably be accomplished, given the circumstances. This may mean lowering expectations with respect to generation of work, given a lack of opportunities to meet with prospective clients; changing requirements for supporting attorneys or staff to meet their current capabilities; having patience with office services personnel who are filling in for or other changes.
2. **Negotiate Boundaries at Work and at Home.** Easier said than done, but consider whether your work space is well-defined in your home, allowing you to meaningfully "push back from the desk" at the end of the day. Clarify standards of responsiveness, communication and workload with supervising and subordinate team members. Establish standards of behavior and support with family members.
3. **Know When to Ask for Support.** Working from home can cause attorneys to mask stress and symptoms of burnout for longer periods than if working in the office, where behavior changes or habit changes might be more noticeable. If you are struggling with depression, anxiety, sleeplessness, or substance abuse, seek help.
4. **Stay Visible With Clients, Partners and Other Lawyers in the Firm, and in the Legal Community.** Staying connected requires more deliberate work when working remotely. Schedule moments to connect with clients and colleagues for "water cooler" conversations, not just task-based communications.
5. **Be Pro-Active About Your Career.** The pandemic has provided a unique opportunity reassess your career. Are your goals the same, or changing? Are you getting the training necessary to achieve your goals?
6. **Take Care of Yourself.** Pay attention to sleep, nutrition, and

exercise—all aspects of mental and physical health. The past 16 months have been particularly stressful, and you may need to “up your game” on self-care routines just to stay even.

7. **Volunteer.** The pandemic has created a plethora of new needs for charitable and legal assistance, and studies show that philanthropic activity is beneficial for mental health.

Consider manipulating physical and digital spaces to foster productive interaction and inclusion.<sup>14</sup> Opportunities for casual interaction improve relationships.

Recognize that “re-entry anxiety”<sup>15</sup> may impact everyone, and consider strategies for coping, including:

- **Incremental or progressive reintegration** – Part-time, flex-time or other timing for return to a full in-office work experience. Scheduling fewer face-to-face meetings, or meeting in smaller groups until gathering become more comfortable.
- **Proactively managing expectations** – Communicate vaccination, masking, work-from-home, and other policies as clearly and as early as possible.
- **Planning for “unanticipated” emotions** – Be aware that things may not go as planned. You, or others around you, may experience grief, sadness, or depression for loved ones lost or impacted by COVID, changes in working teams due to changes in circumstance (for example, departure of colleagues over disputes related to vaccination or masking policies), or other factors; anxiety, anger or other emotions as one travels to and from work and engages with colleagues, or as one fully appreciates how their working environment has changed; and similar emotions—some predictable, some which are not.
- **Practicing both self-care/self-compassion and empathy for others** – During times of transition and heightened emotion, it is healthy to protect and pursue your own self-care routines (sleep, exercise, nutrition, and mental health) and to try to provide others with the same opportunities.

## ABOUT THE AUTHOR



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<sup>14</sup> Anichich, Eric, Jon M. Jachimowicz, Merrick R. Osborne and L. Taylor Phillips, “Design Physical and Digital Spaces to Foster Inclusion,” *Harvard Business Review* (August 11, 2021).

<sup>15</sup> Defined by Jarrett Green in a presentation to the California Bar as “...concerns over physical health, social distancing, reduced flexibility and autonomy, expectations of facetime, losing the comforts of one’s home environment, and navigating in-person norms that now feel foreign and challenging.”