

Law Firm Wellness Initiatives Where Good Intentions Fall Short

The well-meaning wellness initiatives across the legal profession have one fundamental flaw: They do nothing to stop bad actors from bullying and harassing lawyers and professional staff.

As the legal profession's cause célèbre of the moment, "wellness" has inspired many firms to pledge their commitment to a healthier approach for lawyers and professional staff.

Indeed, of the AmLaw 100:

- **74 percent** signed the American Bar Association's Well-Being Pledge;
- **77 percent** promote their wellness initiatives on their website;
- **69 percent** purport to have a formal wellness program; and
- **16 percent** have a dedicated, full-time wellness employee.

Consider the promises made by these firms as signatories to the ABA's Pledge – to make progress toward the pillars of aspirational lawyer wellness:

1. Provide enhanced education on topics related to well-being, mental health, and substance abuse disorders;
2. Disrupt the status quo of drinking-based events;
3. Develop partnerships with outside resources committed to reducing substance abuse disorders and mental health distress;
4. Provide confidential access to addiction and mental health experts and resources;
5. Develop proactive policies and protocols to support assessment and treatment of substance abuse and mental health problems; and
6. Demonstrate that help-seeking and self-care are core cultural values.

Among the actions touted by law firms so far: guest speakers to discuss mental health awareness; apps to promote mindfulness; seasonal fitness trainers; and webinars about anxiety management.

To be sure, these are well-meaning tactics toward a laudable goal.

However, something significant is missing: So much of this moment is focused on treating the symptoms of mental health and substance abuse – yet there is no clear look at the root cause.

To quote Bishop Desmond Tutu, "There comes a point where we need to stop just pulling people out of the river. We need to go upstream and find out why they're falling in."

Why are so many lawyers unwell in the first place? Some of it may stem from a culture that has for too long endured bad behavior.

Within the legal profession, one in two women have been bullied, and one in three men have; one in three women have been sexually harassed, and one in 14 men have. These findings come from a comprehensive survey by the International Bar Association, which engaged nearly 7,000 individuals from 135 countries.

Bullying in the Law

The most common bullying behaviors in the legal profession are ridicule, overbearing supervision and misuse of power and position. However, this escalated into physical violence for 6 percent of respondents.

For most of the targets, bullying is unavoidable: 93 percent of incidents happened at the workplace. (Remote coworkers are not completely immune, though: 2 percent occurred via social media.)

The perpetrator is typically higher on the proverbial ladder: 61 percent were bullied by a supervisor and 43 percent by a more senior figure, such as a partner. More than 60 percent said they did not report their bullying because of the bully's profile or status.

The impact in the workplace is notable: 63 percent leave the organization, while 14 percent leave the legal profession altogether.

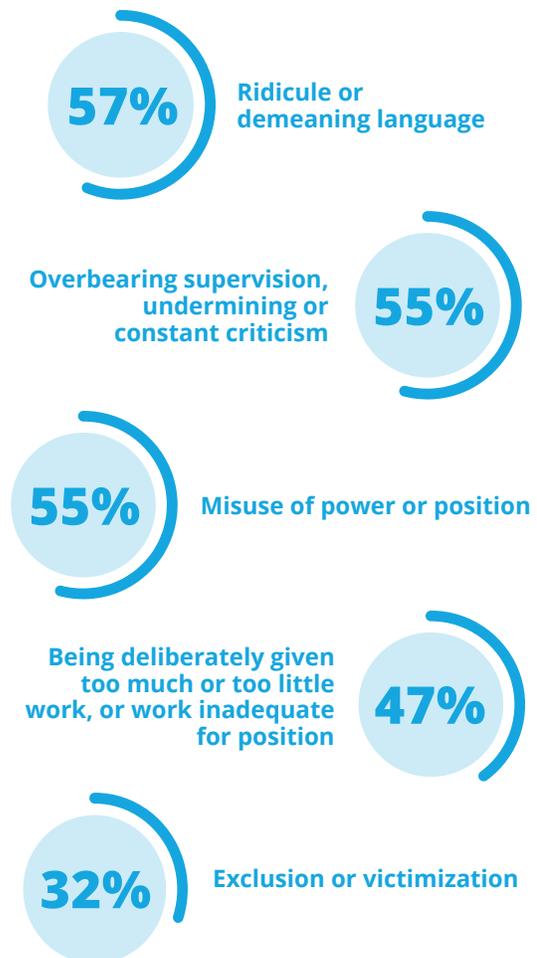
Bullying is a major threat not just to one's wellness, but to quality of life: *Innovations in Clinical Neuroscience* reported that effects of bullying can include mental distress, sleep disturbances, fatigue, depression and anxiety, as well as physical ailments ranging from cardiovascular issues to acute pain.

Harassment in Law

Meanwhile, the most common harassment behaviors are sexist comments, sexual or suggestive comments, and inappropriate looks. This escalated into inappropriate physical contact for 49 percent of respondents; seriously inappropriate physical contact for 22 percent of respondents; and, horrifically, rape or physical assault for 3 percent of respondents.

Again, a vast majority – 75 percent – of these incidents take place at the office. Another 50 percent were said to occur at work social events, and 19 percent during work travel. Bad behavior occurred online, too, with 13 percent of respondents receiving explicit content through email or social media, and 4 percent encountering sexist behavior through work applications.

LEGAL PROFESSION BULLYING: The Five Most Common Offenses



Source: International Bar Association, *Us Too? Bullying and Sexual Harassment in the Legal Profession*

Victims are nearly twice as likely to be harassed by someone more senior: 54 percent said their perpetrator outranked them, while 28 percent were harassed by someone of equal seniority. More than 51 percent said they did not report their harassment because of the profile and status of the perpetrator, while 48 percent feared repercussions.

As with bullying, the impact also is profound: While 35 percent leave the workplace, 8 percent leave the profession.

According to *Society and Mental Health*, those who experience frequent sexual harassment at work have higher levels of depression than non-harassed workers. Moreover, harassment early in one's career – such as in the associate stage – can carry long-term effects on depression later. Harassment also is linked to increased anxiety, post-traumatic stress disorder and diminished psychological well-being.

What's Not Working

The IBA survey showed that law firms' current efforts – policies and training – are largely ineffective at preventing these misdeeds. In fact, respondents at workplaces with policies and training were just as likely to be bullied or sexually harassed as those at workplaces without.

When firms do take action against perpetrators, where do these troublesome lawyers go? Straight to other firms. Indeed, in Decipher Investigative Intelligence's analysis of thousands of lateral partner candidates, "red flag" candidates have worked at an average of 4.5 firms entering the screening process.

For a safer and saner profession, we can and must stop this carousel of abuse.

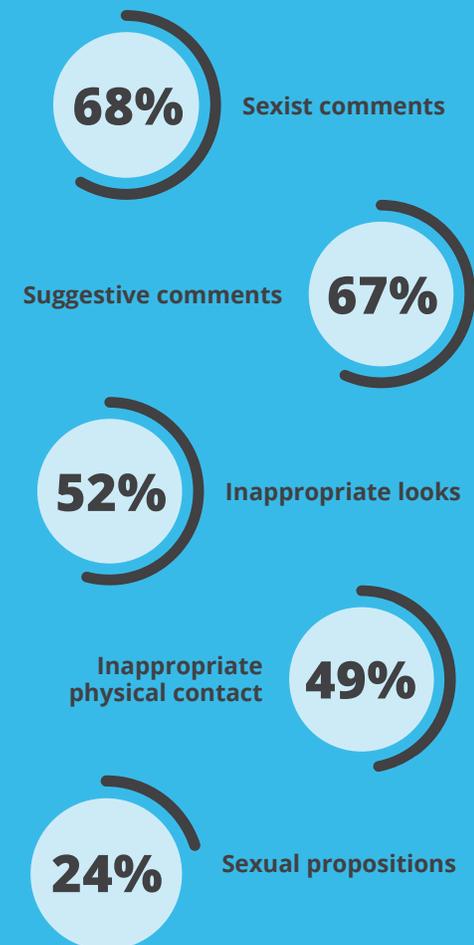
It starts with a principled and disciplined gatekeeper: Who are you letting into the firm?

Despite the rampant harassment and bullying within law offices, meaningful due diligence is lacking. According to a 2021 survey by Decipher:

- **77 percent** do not regularly interview former colleagues;
- **65 percent** do not regularly interview candidates' references; and
- **55 percent** do not regularly review candidates' social media.

Sadly, far too often no real due diligence is applied whatsoever, and this is particularly problematic in the hiring sprees that have defined 2021 and 2022 so far. Law firms are moving fast and furious: According to Decipher analysis, candidates that had been taking four to six months to court are now being hired in four to six **weeks**.

LEGAL PROFESSION SEXUAL HARASSMENT The Five Most Common Offenses



Source: International Bar Association, *Us Too? Bullying and Sexual Harassment in the Legal Profession*

Four Actions to Take Now

Recall that 14 percent of people who are bullied leave the legal profession, while 8 percent of those who are harassed do. This loss of talent is more than sad, it's unacceptable.

Law firms that are truly committed to wellness – like the signatories of the ABA Pledge – must take action to ensure that they are not actively recruiting individuals who could jeopardize the health, well-being and career potential of their people.

Building in a system to consistently screen lateral candidates is an effective complement to a wellness initiative because it does not just treat stress, anxiety and the potential for substance abuse – it can limit the factors that inspire these conditions in the first place.

WHERE TO START

1 Ask for a complete career history on your Lateral Partner Questionnaire (LPQ).

Your LPQ must be very clear here: Ask for every place of employment, the duration thereof and the reason for leaving. This should not be subject to interpretation, or candidates may omit some obvious causes for alarm, such as a four-day stint at a firm.

2 Require every candidate to “make a record.”

The LPQ should address every candidate's complete legal history: whether they have been arrested, whether they have been a party to criminal or civil case, whether they have been accused of malfeasance or sexual harassment, and so on.

For most candidates, this will be a long list of “no” checkmarks that will take two minutes to complete. But if you are not asking for the record before hiring, you miss the opportunity to make an informed decision.

3 Require every candidate to complete the LPQ.

About 30 percent of the LPQs received by Decipher are incomplete. While this can be benign, we have seen extreme cases where candidates skip very serious questions, such as whether they have been accused or convicted of sexual assault. If you see that any questions on your LPQ have been left blank, follow up and insist on an answer.

4 Engage in comprehensive due diligence.

While these first three steps are a smart first line of defense, a comprehensive due diligence program will offer the most protection. When due diligence is employed, it works: 90 percent of Decipher survey respondents said they had halted a candidate's offer because of information uncovered from a pre-hire investigation.

In the era of wellness, we must do more than pledge and promote – we must protect.

Decipher reduces law firms' lateral hire risks and costs by providing deep-dive intelligence about prospective laterals – before they are hired. To learn more, visit decipherglobal.com.