GEORGETOWN LAW
Center on Ethics and the Legal Profession

Thomson Reuters Institute

2022 Report on the State of the Legal Market

A challenging road to recovery

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The past year marked another extraordinary one for the legal industry as law firms began to emerge from the worst of the pandemic and moved toward some semblance of normalcy. From a financial standpoint, demand growth continued to rise at a healthy pace, mirroring the trend seen in the second half of 2020.[1] Firms were also able to maintain a fairly steady increase in working rates, while achieving very strong realization, again reflecting a pattern seen in 2020.

That said, however, the year had its challenges as well.

The demand increase experienced over the year — especially in the corporate, M&A, and real estate practice areas — led firms to increase associate and other professional staff hiring quite aggressively. As a result, we saw hiring across the market grow at levels unseen for a decade. This hiring surge was accompanied by dramatic increases in associate compensation, resulting in significant growth in direct expenses for firms in the second half of the year.

> ***"[R]ecruiting and retaining both legal and other professional staff may well prove to be among the biggest post-pandemic challenges confronting law firms in 2022."***

Unfortunately, the effects of this hiring surge were also tempered by a dramatic rise in associate turnover, with firms seeing their associate turnover rates increase to record levels. As a result, by year's end, many firms found themselves locked in an expensive war for talent that was complicated by unprecedented problems of retaining the talent already in house. These problems of recruiting and retaining both legal and other professional staff may well prove to be among the biggest post-pandemic challenges confronting law firms in 2022.

Of course, law firms are not unique in this respect. In the face of the so-called *Great Resignation*, businesses across the economy are confronting similar issues of how to entice their employees back into the office environment while, at the same time, providing the support and flexibility necessary to meet the needs of anxious people whose attitudes toward work and life may very well have shifted during months of pandemic-driven isolation. And all

1 Financial data for this report is provided by Thomson Reuters Financial Insights®. This data is based on reported results from 171 U.S.-based law firms, including 51 Am Law 100 firms, 55 Am Law Second Hundred firms, and 65 additional Midsize firms (outside of the Am Law 200).

of these factors may force serious reconsideration of how all businesses (including law firms) think about their traditional talent models.

Lessons of the pandemic

Mark Twain once said that "history doesn't repeat itself, but it often rhymes." In that context, it is interesting to consider our current experience of emerging from the global COVID-19 pandemic by reflecting on an earlier pandemic and the lessons we might take from it.

From early 1665 to mid-1666, London experienced a devastating wave of bubonic plague that killed an estimated 100,000 people, almost one-quarter of the city's population, in just 18 months. As the disease spread, those with the means to do so left the city, while those left behind quarantined as best they could. Not surprisingly, the economy of London came to an abrupt halt.

In September 1666, as the plague began to subside, London was hit with a second disaster — a four-day fire that swept through the central part of the city and destroyed everything in its path. The *Great Fire of London* (as it was called) destroyed 13,200 houses, 87 parish churches, St. Paul's Cathedral, and most government buildings within the medieval city walls. The fire ruined city merchants and property owners, making recovery from the pandemic even more difficult.

As London faced the daunting task of rebuilding, skilled workers were in short supply and in great demand. The population was traumatized and dispirited, and a full-scale rebellion against the monarchy was feared. Ways of bringing the community back together became an urgent priority.

At about this time, Sir Christopher Wren was given the commission to redesign and rebuild St. Paul's Cathedral, a project that would employ hundreds of laborers and skilled workmen. The story is that, as the project got underway, Wren, who was not personally known by many of the workers, stopped and asked three workers who were all engaged in the same task what they were doing. He received three very different answers. The first said, "I am cutting this stone." The second answered, "I am earning three shillings, six pence per day." The third man straightened up, squared his shoulders, and still holding his mallet and chisel, replied, "I am helping Sir Christopher Wren build this great cathedral."

In his short visit, Wren received three different answers and three very different motivations. For one worker, it was just a job. For another, it was just about the money. But, for the third, it was about pride in participating in something important, something bigger than himself.

This parable has lessons for our time. As firms face the challenges of hiring, training, and retaining associates and other professional staff, it is important to remember that employee satisfaction with a job comes primarily from factors *other* than compensation. We have known for decades that money alone is insufficient to create either satisfaction or loyalty.

"Paying [employees] what they think they are worth does not in itself create satisfaction."

Looking at the groundbreaking research of psychologist Frederick Herzberg in the 1950s,[2] we know that paying employees less than what they think they deserve creates *dissatisfaction*, but paying them what they think they are worth does not in itself create satisfaction. Job satisfaction depends instead on intangible factors like experiencing feelings of value and meaning in the work, being appreciated and recognized, having opportunities for growth and personal satisfaction, believing that you are making a contribution to something larger than yourself, and more. It's about making a job more than "just a job" or "just about the money."

We will explore some of the ways that innovative law firms are seeking to address these and related issues in the sections that follow. But first, we will turn to a more detailed review of law firm financial performance during 2021.

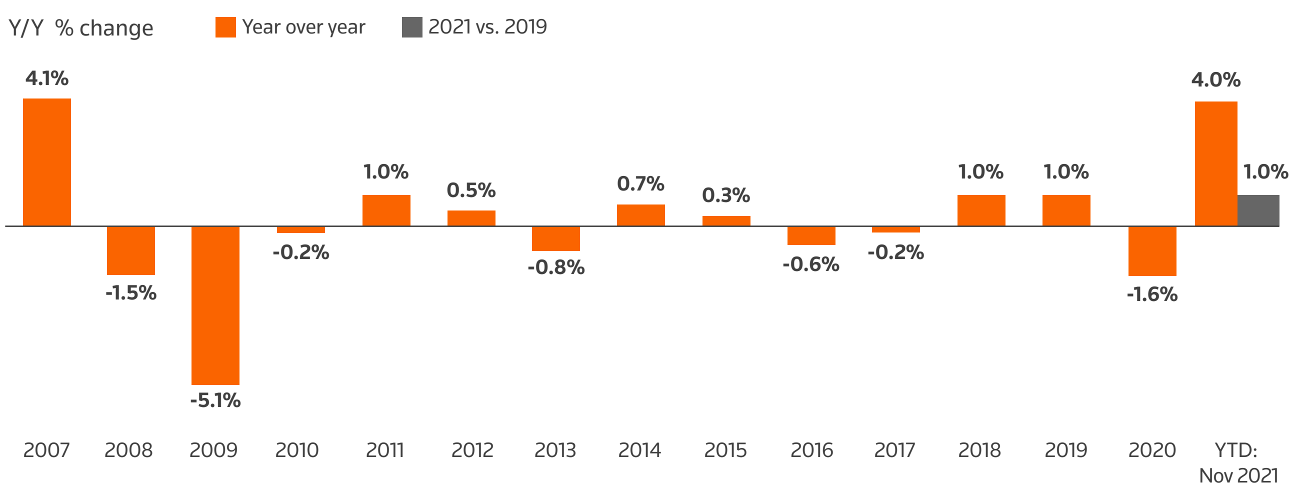
2 Frederick Herzberg was a professor at the University of Utah and, before that, at Case Western Reserve University. He was one of the most influential names in business management, particularly for his motivator-hygiene theory and ideas relating to job enrichment. His 1968 publication "One More Time, How Do You Motivate Employees?" in the *Harvard Business Review* set the record for the most frequently requested reprint in the history of that publication.

Review of law firm performance in 2021

During the past year, law firms continued to perform well financially despite the challenges posed by the COVID-19 pandemic. As compared to 2020, most financial indicators showed strong improvement in 2021, though it must be remembered that 2020 was a highly anomalous year.[3] However, even compared to 2019 (the last "normal" statistical year), firms in 2021 recorded steady financial improvement on most indicators, albeit more modestly than in the 2020 comparison.

After a disappointing start in Q1 2021, demand soared thereafter. Indeed, during Q2 and Q3, demand posted its two strongest quarterly growth rates in the last decade, ending up 4.0% (on a YTD basis) compared to 2020, although only up 1.0% compared to 2019. (These results are shown in Figure 1 below.) In the YTD vs. 2020 comparison, we see in the dispersion data set out in Figure 2 that all three law firm segments had over 70% of firms in the positive territory as to demand growth.

Figure 1: **Growth in demand for law firm services**

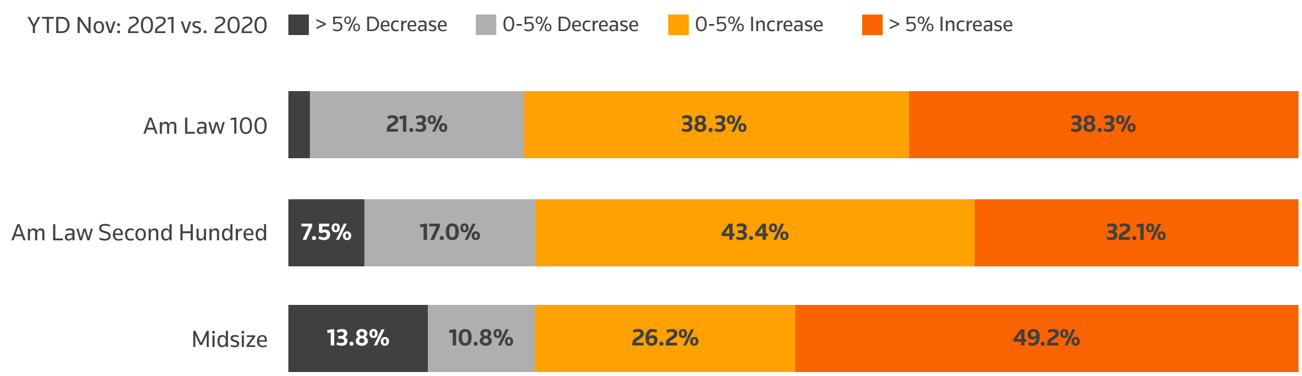


All timekeepers. Billable time type; non-contingent matters.

Source: Thomson Reuters 2022

3 From March until August 2020, as the impacts of the pandemic spread across the entire economy, law firms experienced a dramatic decline in demand, hitting a serious negative growth rate of -6% in the second quarter of the year. Demand growth reversed, however, during the remainder of the year and, because of substantial rate increases and hiring and expense cutbacks, firms were able to end 2020 with record profits. Because of the extreme roller-coaster nature of 2020, it is a difficult year to use for statistical comparison purposes.

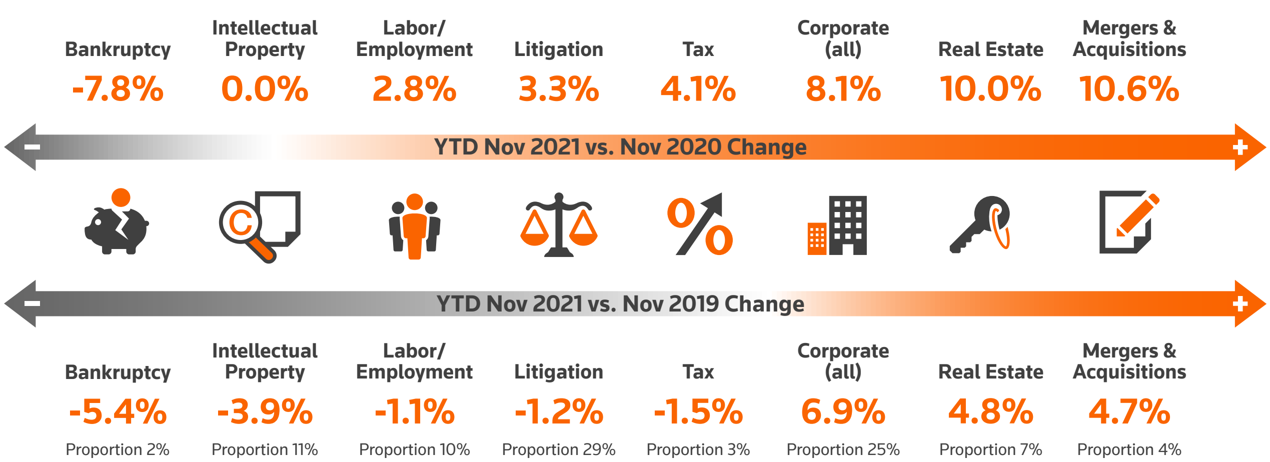
Figure 2: **Dispersion of demand growth among law firms**



All timekeepers. Billable time type; non-contingent matters. *Source: Thomson Reuters 2022*

Demand growth, as shown below in Figure 3, was driven primarily by real estate and corporate (including M&A) practice areas, although almost all practice areas experienced some amount of growth compared to 2020 — as seen with the numbers on top of Figure 3. Compared to 2019, however, demand growth — as shown with the numbers on the bottom of Figure 3 — was more modest, with only the corporate (including M&A) and real estate practices showing positive growth. This corporate and real estate practice surge sufficiently offset the much smaller recovery against pre-pandemic levels in other practice areas, such as litigation, labor & employment, and intellectual property.

Figure 3: **Practice demand growth**

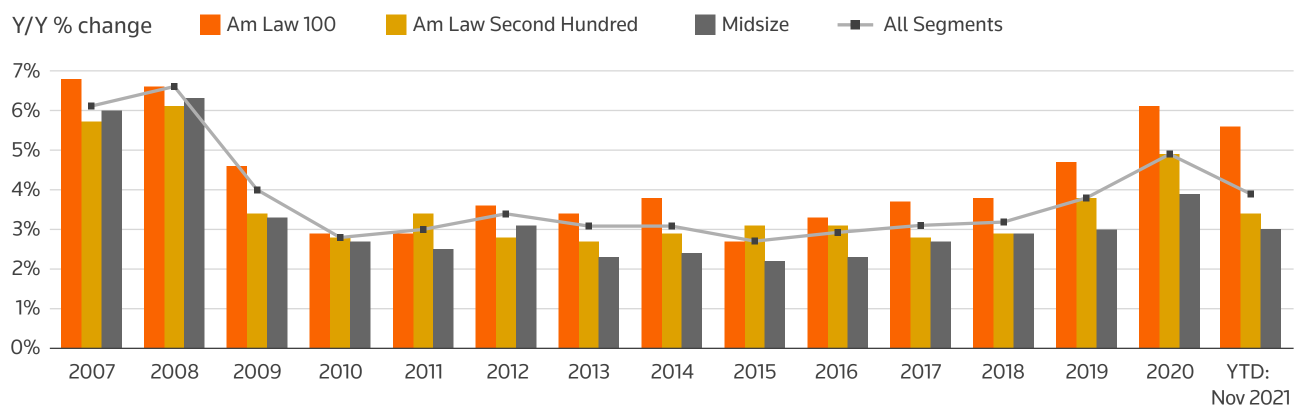


All timekeepers. Billable time type; non-contingent matters. *Source: Thomson Reuters 2022*

Law firms continued to increase their billing rates during 2021 on a fairly aggressive basis. As can be seen in Figure 4 below, through November 2021, worked rates for all timekeepers[4] across all firms grew 3.9% on a YTD basis, with Am Law 100 law firms leading with a rate surge of 5.6%.

Increases for other market segments were more modest, with Am Law Second Hundred firms recording a 3.4% increase and Midsize law firms growing rates at 3.0%. While rate growth cooled for all segments compared to 2020's pace, Am Law 100 firms were able to maintain growth above 5%. The corporate work surge noted previously was heavily consolidated among Am Law 100 firms, and it appears that as demand overwhelmed capacity, it allowed these larger firms to be a bit more selective in the work they took on, which had a meaningful impact on rate growth in that sector.

Figure 4: **Worked rate growth by segment**



All timekeepers. Billable time type; non-contingent matters.

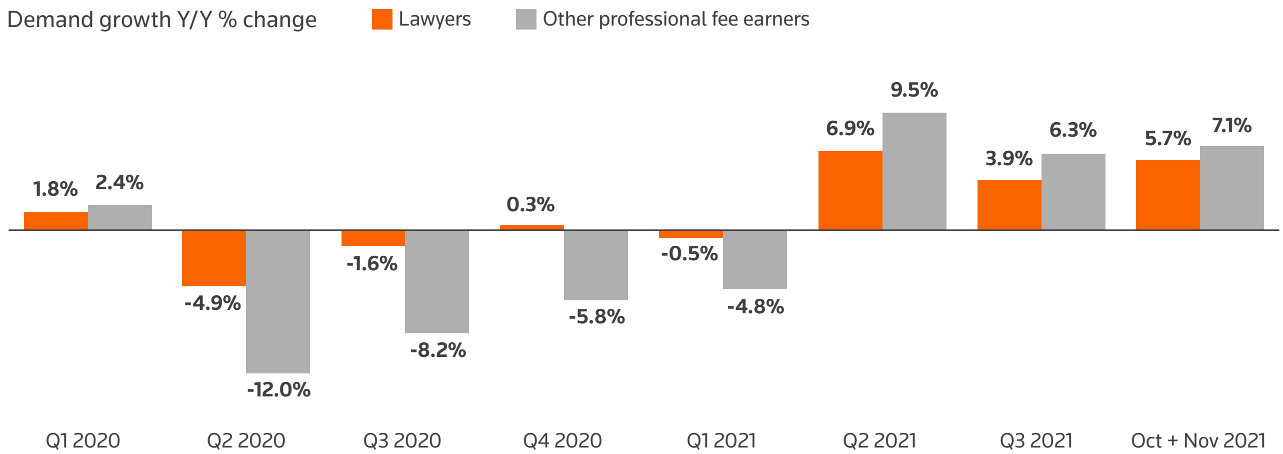
Source: Thomson Reuters 2022

One interesting aspect of these rate increases was that firms employed a different mix of hours and timekeepers in 2021 than they did the previous year. During 2020, the number of hours that other professional fee earners[5] worked dropped dramatically, hitting a low point with a negative growth rate of -12.0% in Q2 2020. Lawyer demand also dropped in 2020, albeit more modestly.

These trends have now reversed dramatically in 2021, however. As indicated in Figure 5, starting in Q2 2021, other professional fee earners have experienced growth rates much higher than lawyers. This reversal in the mix of timekeepers somewhat reduced the average worked rate during 2021, and thus we saw less growth in worked rates, as can be seen in Figure 4.

4 Worked rates, also referred to as negotiated rates, are the rates that a firm agrees to with particular clients for work on given matters.
5 "Other professional fee earners" covers all timekeepers other than lawyers. It includes paralegals, project managers, non-lawyer specialists, and others.

Figure 5: Timekeeper shifts of 2020 reversed in 2021

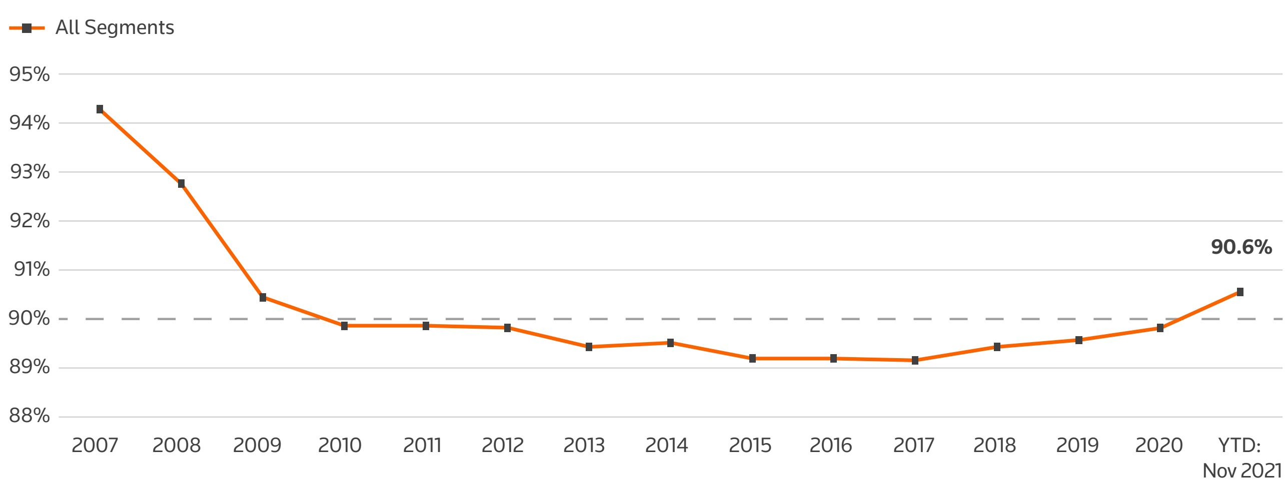


Includes billable and contingent matters.

Source: Thomson Reuters 2022

Despite the near 4% increase in worked rates, we also saw a substantial jump in the realization rates that firms experienced during the past year. In 2021, as shown in Figure 6, the average collection realization against worked rates across the market was 90.6%, the highest level seen since 2009. Each segment saw improvement in its realization rate as 2021 went along. Through the end of November, the Am Law Second Hundred firms led with a 91.6% realization rate, followed closely by Midsize firms at 91.1%, and lastly, by Am Law 100 firms at 88.7%.

Figure 6: Collection realization against worked (negotiated/agreed)

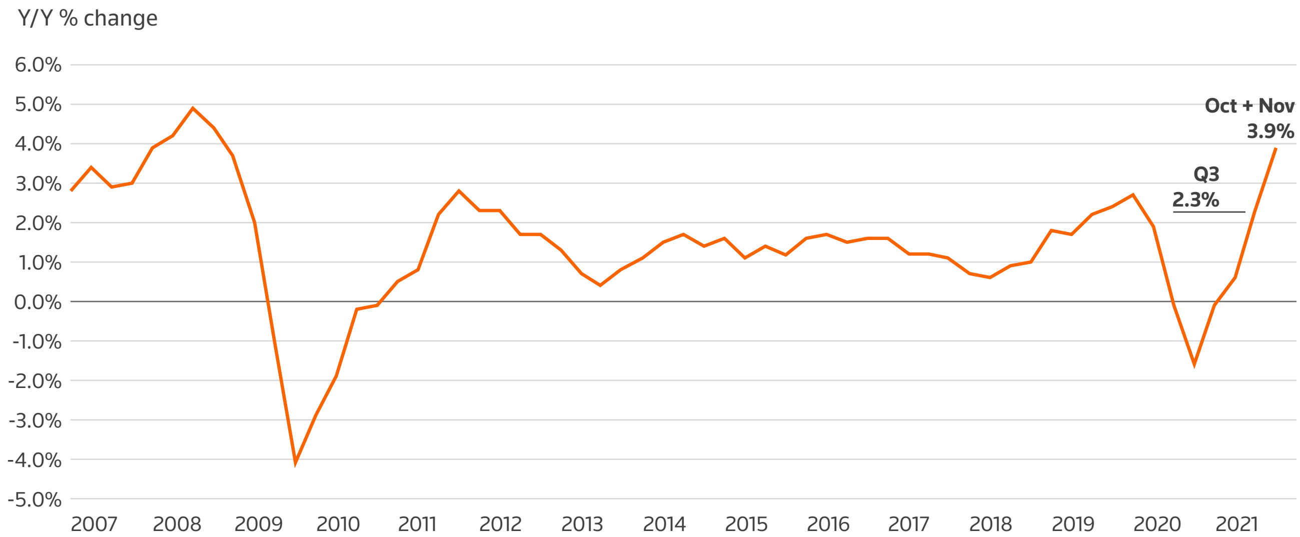


Lawyers only. Billable time type; non-contingent matters.

Source: Thomson Reuters 2022

In terms of growth in lawyer headcount, the rate of increase ramped up steadily during the first half of 2021 and grew substantially during the second half of the year, as many firms brought in *two* new classes of associates (the 2021 class and the class that was deferred from 2020). As a result, as shown in Figure 7, by the end of November, lawyer headcount growth was up 3.9%, the highest level seen in more than a decade.

Figure 7: **Lawyer (FTE) growth**



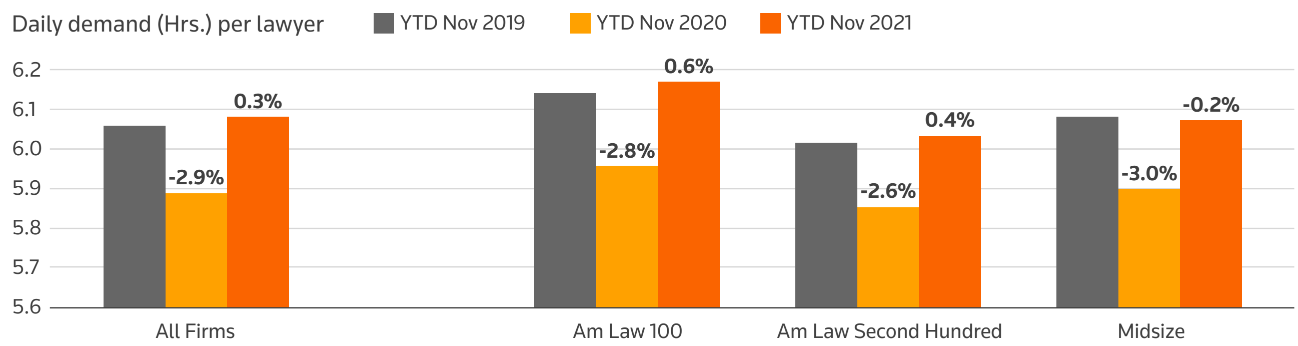
Lawyers only.

Source: Thomson Reuters 2022

The significant growth in lawyer headcount during 2021 offset the increase in demand to moderate any growth in productivity. As can be seen in Figure 8, on a YTD basis through November 2021, productivity improved as compared to 2020, but was only 0.3% above the average daily demand per lawyer in 2019. As can also be seen, Am Law 100 firms fared a bit better in this regard than other segments of the market.

To see the overall productivity picture from a broader perspective, as shown in Figures 9 and 10, the average billable hours worked per lawyer per month in 2021 were still substantially below the average hours seen prior to the financial crisis of 2007-'08, resulting in a substantial hit to law firm revenues. In 2007, the average billable hours were 134 per lawyer per month, or 10 hours per month *higher* than the 124 billable hours per lawyer per month recorded in 2021. If we applied the average worked rate charged by firms in 2021 ($533), the decline in billable hours since 2007 would represent a current cost to the average law firm of $5,330 per lawyer per month, or $63,960 per lawyer per year.

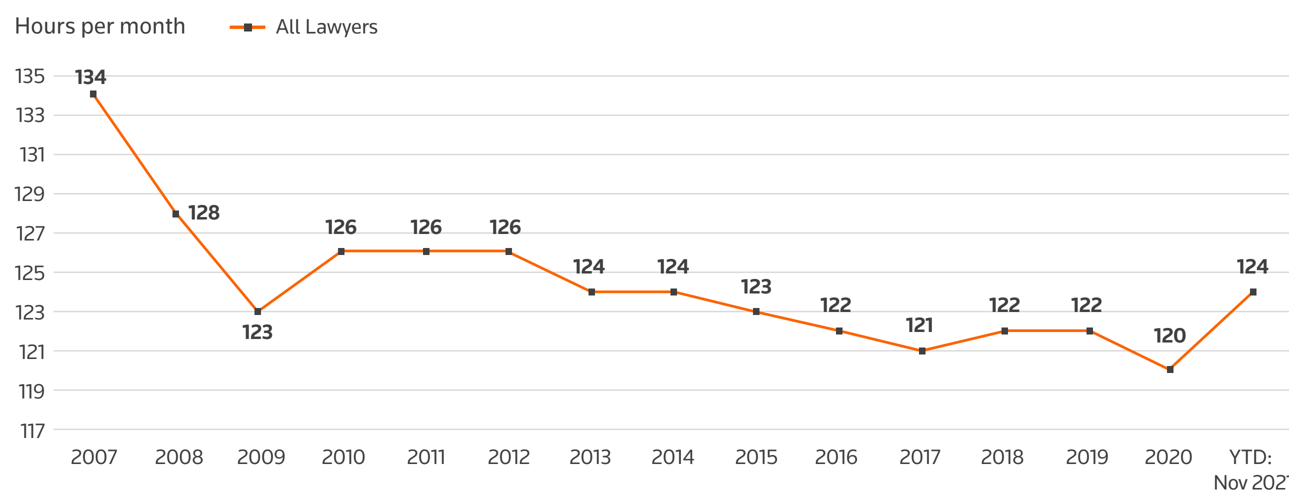
Figure 8: **Average daily demand per lawyer**



*Lawyers only. Billable time type; non-contingent matters. *Percentages measure change from YTD Nov 2019.*

Source: Thomson Reuters 2022

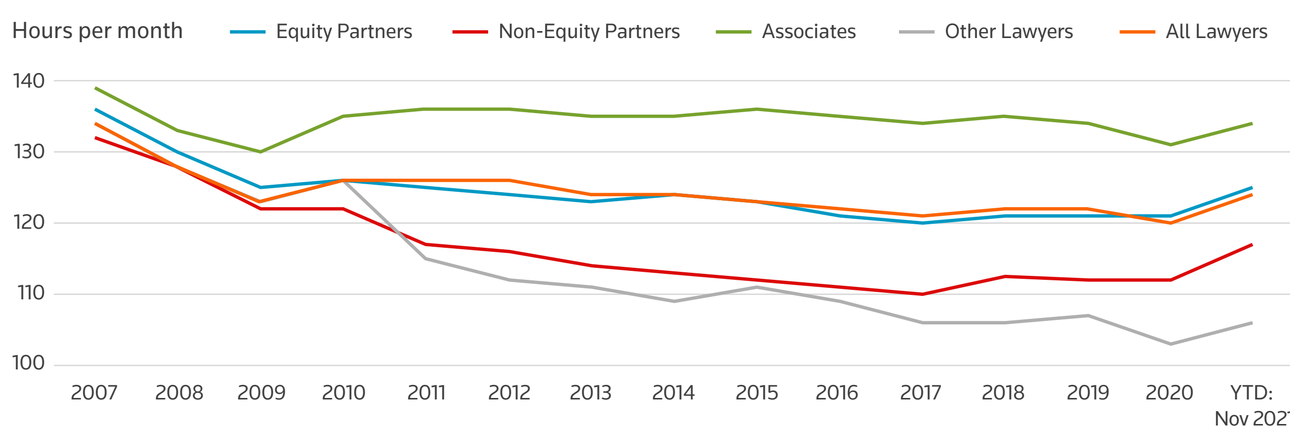
Figure 9: **Hours worked per lawyer**



Lawyers only. Billable time type; non-contingent matters.

Source: Thomson Reuters 2022

Figure 10: **Hours worked per lawyer**

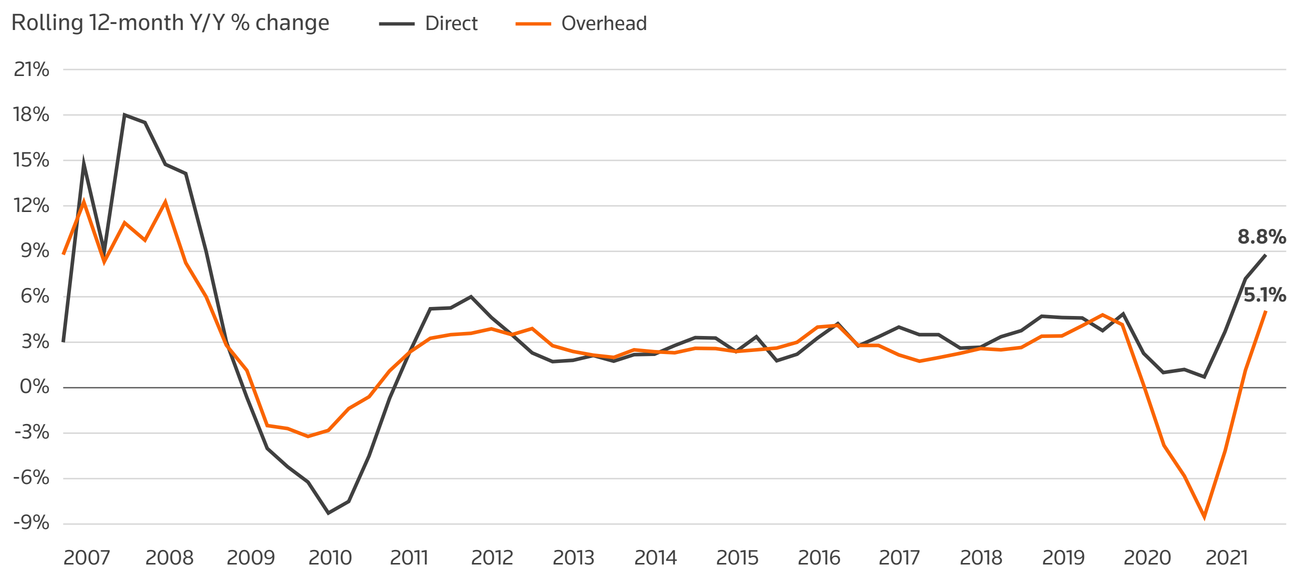


Lawyers only. Billable time type; non-contingent matters.

Source: Thomson Reuters 2022

On the expense side, 2021 saw a sharp increase in direct expenses and overhead expenses by November.[6] As set out in Figure 11 below, direct expenses rose a whopping 8.8% (on a rolling 12-month change basis), while overhead expenses grew at 5.1%. The steep acceleration in overhead expenses isn't as important as that of direct expenses, at least at the moment. Although recording strong growth against 2020's low overhead figures, firms have thus far held the growth of their indirect expenses to roughly pre-pandemic levels.

Figure 11: **Expense growth**

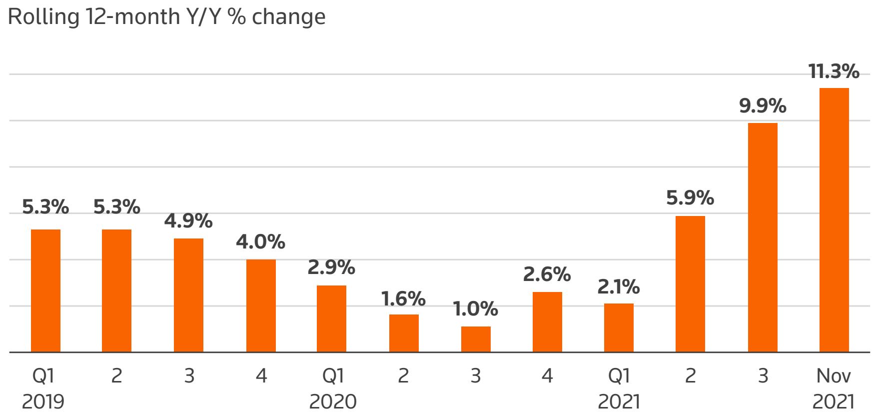


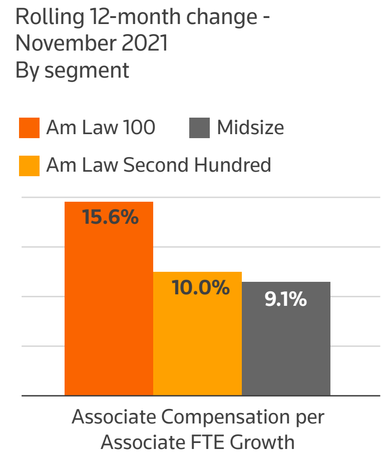
Source: Thomson Reuters 2022

The increase in direct expenses reflected primarily the sharp growth in associate compensation across the market. As indicated in Figure 12, average associate compensation rose by 11.3% per full-time equivalent (FTE) in the 12 months ending in November 2021. For Am Law 100 firms, the increase averaged over 15%.

6 For these purposes, direct expenses refer to those expenses related to fee earners, primarily the compensation and benefits costs of lawyers and other timekeepers. Overhead (or indirect) expenses refer to all other expenses of the firm, including occupancy costs, administrative and staff compensation and benefits, technology costs, recruiting costs, business development costs, and more.

Figure 12: Associate compensation growth



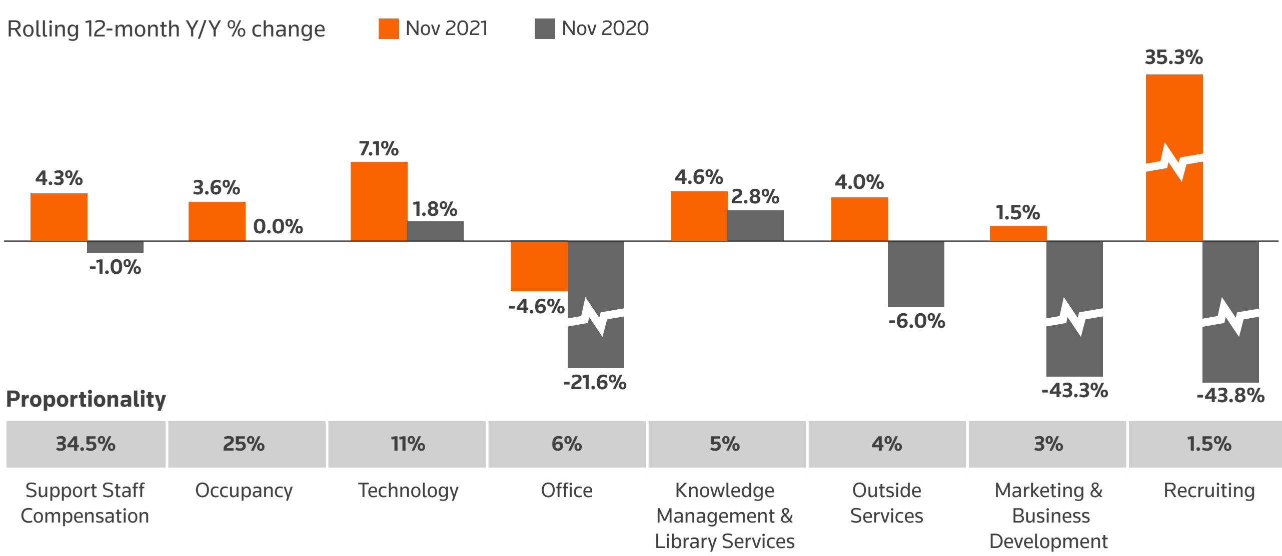


Associate compensation divided by associate FTEs.

Source: Thomson Reuters 2022

Figure 13 shows the details of the increases in overhead expenses through November 2021. As can be seen, the largest increases have been for staff compensation, technology, knowledge management & library services, outside services, and recruiting. Expense line items which were dramatically lower in 2020, such as office expenses continued to see contraction in 2021. Marketing & business development expenses, while moving back into positive territory in 2021, have yet to achieve pre-pandemic levels.

Figure 13: Overhead detail

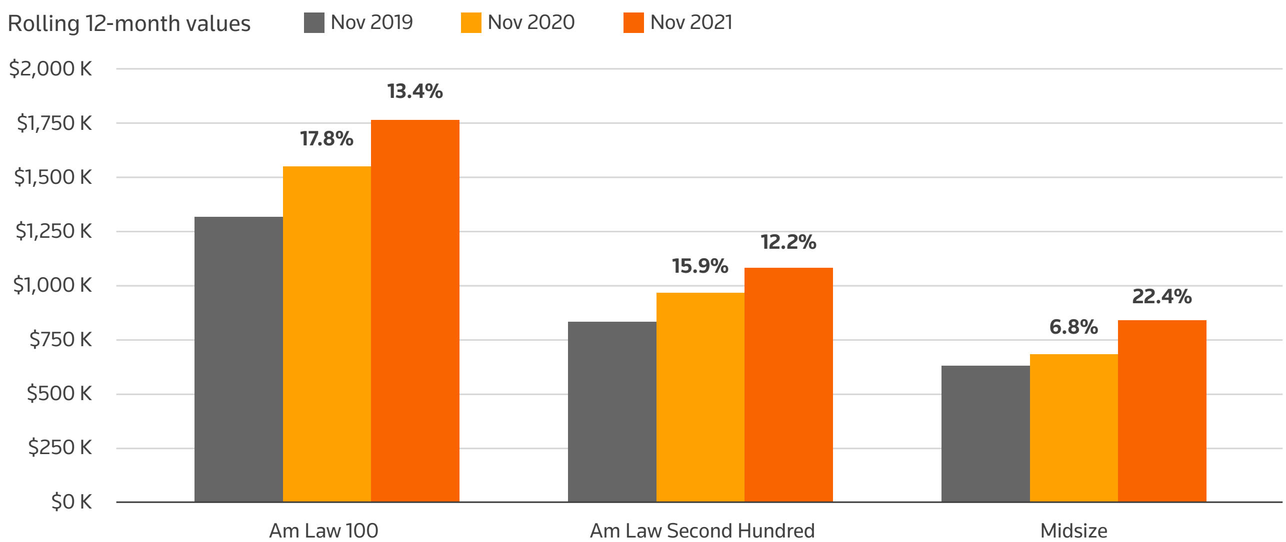


Source: Thomson Reuters 2022

The combined results from the above-described indicators suggest that law firms should end 2021 in good financial shape. Figure 14 shows profits per equity partner (PPEP) on a rolling 12-month value basis over the past three years, broken out by law firm segment. As can be seen, all segments of the market seem well positioned for continued profit growth in 2021.

Am Law firms that had stronger growth in PPEP in 2020 are still seeing double-digit growth in 2021. Midsize firms have had strong revenue and more modest cost pressures, leading to a 22.4% average growth rate in PPEP for that sector.

Figure 14: **Profit per equity partner growth**



**Percentages relate to PPEP growth from the previous 12-month period.*

Source: Thomson Reuters 2022

Managing the road back

As law firms come out of the worst impacts of the pandemic and seek to resume "normal" operations, they must confront the challenges of life in a post-pandemic world. Notwithstanding the fact that most firms have survived the pandemic quite well from a financial standpoint, the new work environment that is emerging in the post-COVID era will be distinctly different from anything that firms have encountered before. It is a safe assumption that adapting successfully to these changes will be the primary challenge confronting law firms in 2022.

In the sections that follow, we address four separate but interrelated issues we believe are likely to dominate the attention of law firm leaders in the coming year. These issues include: (*i*) responding to the fierce competition for legal and other professional talent; (*ii*) facing the crisis of retaining the talent firms already have; (*iii*) successfully navigating the hybrid work model; and (*iv*) remaining operationally flexible in responding to further changes that may emerge in the market.

Responding to the competition for talent

In the *2021 Law Firm Business Leaders Report* — a survey of the business leaders of 55 U.S. law firms that was published in October by the Thomson Reuters Institute and the Georgetown Law Center — firm executives identified the greatest risks to profitability their firms would likely face in 2022. The three highest risks to profitability all involved talent and the intense competition reflected in the currently raging talent war.

In order of priority, the risks included: (*i*) lawyer recruitment and retention; (*ii*) poaching of staff by competitors; and (*iii*) increasing associate salaries. These results were in stark contrast to the 2020 survey in which talent issues didn't even make the top five risks threatening law firm profitability.

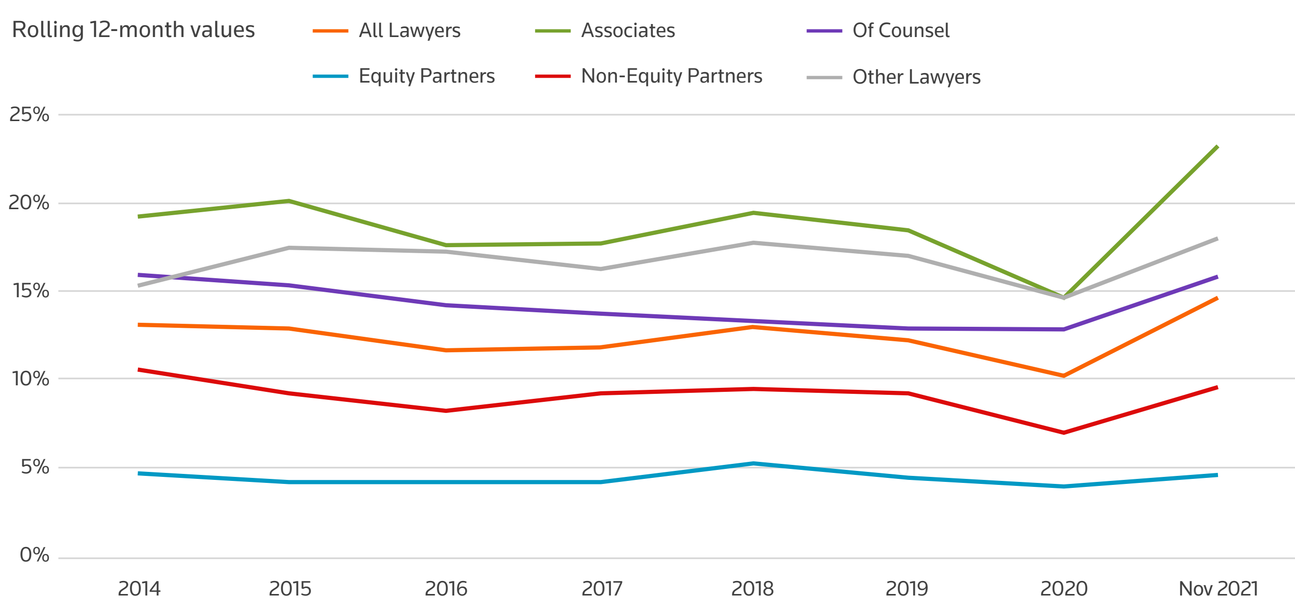
As previously noted, these results are particularly interesting given the focus that firms have had on hiring and retention during 2021, especially in the latter part of the year. Over the past several months, firms across the market have increased associate compensation significantly through salary adjustments and bonus payments. As previously noted, by the end of November 2021, associate compensation for all segments of the market had increased 11.3%, on a rolling 12-month basis. The increase was even higher — more than 15% — among Am Law 100 firms.

The salary increases positively impacted law firm recruiting, although the benefits skewed toward smaller firms. On a YTD basis, lawyer headcount grew 1.5% in November 2021 as compared to November 2020, with most of that growth occurring among Midsize and Am Law Second Hundred firms. Interestingly, headcount growth would be even larger if it were not offset by a significant and concurrent increase in turnover rates.

As shown in Figures 15 and 16 below, the associate turnover rate for all firms reached 23.2% through November 2021 on a rolling 12-month basis. This is significantly above the 18.7% rate experienced in 2019 (the last "normal" year). For Am Law 100 firms, the turnover rate hit 23.7% during the same period, compared to 22.1% for the Am Law Second Hundred and 22.0% for Midsize firms.

In stark terms, at the end of November 2021, all law firms were edging dangerously close to losing almost one-quarter of their associates in 2021!

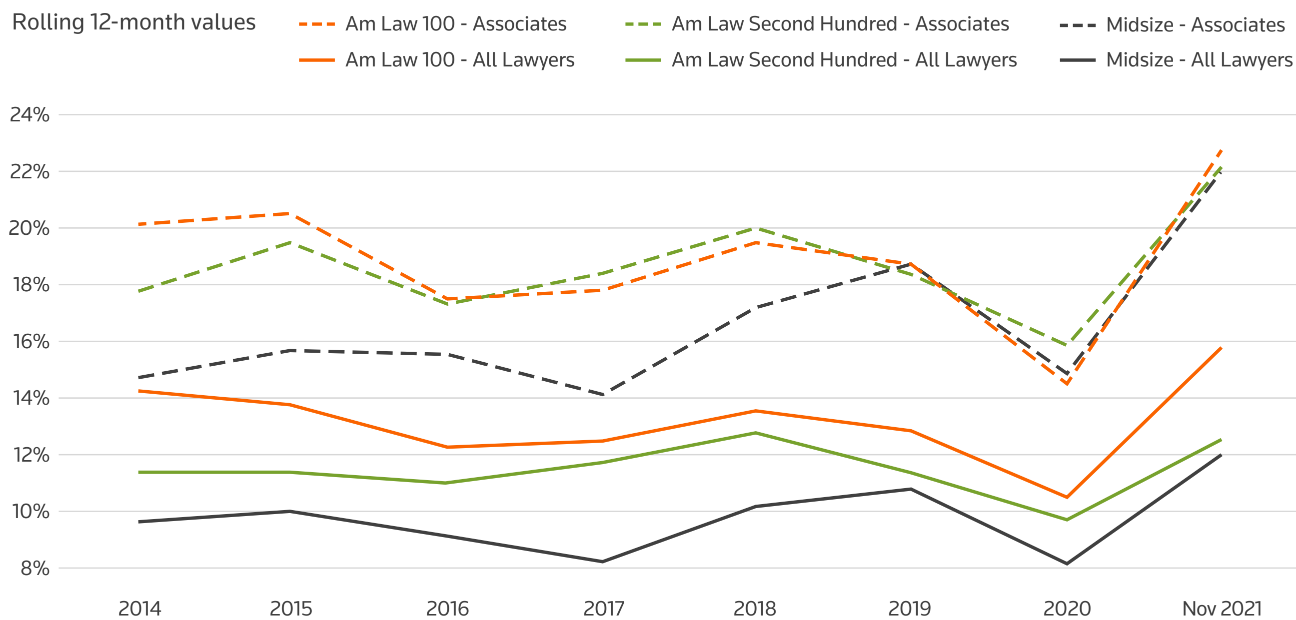
Figure 15: **Turnover analysis**



Turnover = The number of lawyers who left the firm divided by the number of lawyers at the beginning of the time period.

Source: Thomson Reuters 2022

Figure 16: **Turnover analysis by segment**



Turnover = Number of lawyers who left the firm divided by the number of lawyers at the beginning of the time period. *Source: Thomson Reuters 2022*

At the same time, the dramatic increase in associate compensation has placed law firms under growing economic pressure. As previously observed, through November 2021, direct expenses grew by a whopping 8.8%, on a rolling 12-month basis. For Am Law 100 firms, the expense growth was even higher — at 11.9%. This surge in direct expenses was the highest seen since the financial crisis of 2007-'08. And it's a change that will surely impact law firm profitability in the coming year. Yet, the lawyer headcount growth achieved through this enormous outlay of cash was comparatively modest — only 0.9% for Am Law 100 firms for YTD 2021 as compared to YTD 2020.

This data leads inevitably to the question of whether the approach to the talent war that is being taken by most firms is sustainable for the long term. In response to the fierce competition for talent, firms are spending *huge* amounts of money and putting their profits at increasing risk for fairly modest returns — at least if you consider the real costs of high levels of lawyer turnover.

The intriguing question thus becomes, whether refocusing recruitment strategies to emphasize factors other than (or in addition to) compensation might not prove more productive?

This question is particularly important as firms confront the realities of a post-pandemic workforce. As shown in phenomena like *The Great Resignation*, having spent months in pandemic-related isolation, many workers are returning to the labor market with very different attitudes and expectations than they may have had before. Many are more concerned about flexibility and personal control over their working arrangements than simply how much money they're making. And, like the third worker questioned by Sir Christopher Wren, increasing numbers of young professionals appear more focused on meaning and purpose than simply having a job.

To succeed in the war for talent, it is likely that firms will need to focus as much on these issues as on compensation levels. The market for talent has shifted — certainly for the short term and perhaps for longer — and the competitive factors have expanded. The traditional law firm response of just throwing more money at the problem is not likely to work as well going forward.

Facing the retention crisis

As noted above, associate turnover rates in law firms have hit record high levels.

Emerging from the pandemic, the attitudes of associates toward life and work have clearly changed, and the loyalty of associates to their law firms has waned. About 27% of the 3,700 associates from 77 Am Law 200 firms surveyed by The American Lawyer for its *2021 Midlevel Associates Survey*, said they would leave their current law firm for higher compensation. More importantly, 60% of respondents said they would consider leaving their firm for a better work-life balance.[7]

These survey results may well have been driven in part by the increased workloads experienced by many lawyers — particularly those in the frothy corporate and real estate practice areas — during the past year. And interestingly, the pushback against perceived long working hours[8] was more of an issue with associates than it was with middle-aged lawyers.

Further, the Thomson Reuters' *Stellar Performance: Skills and Progression Mid-Year Survey*,[9] found that:

> Young professionals are placing more explicit emphasis on work/life balance, mental well-being, leisure, and other activities outside work than was evident in previous generations. A higher proportion of the professional workforce are mothers and, as men now take more active roles in child-rearing, it means that younger professionals as a group are juggling more domestic responsibilities alongside their paid jobs. Today's under-40s are also conscious that their working lives will likely be much longer than those of their older colleagues, which further influences their perspective. Collectively, these factors mean than long working hours are a potential push factor for younger talent to leave law firms.[10]

7 Dylan Jackson, "The Reluctant Return," *The American Lawyer*, Sept. 2021, at 32, 34-36.
8 It is critical to note that perception is very important here. Although there is a widely shared belief among younger lawyers that current billable hours must be at record levels, in fact (as previously noted) that is not the case. The 124 average billable hours per month worked by lawyers in November 2021 were about 10% less than the 134 billable hours per month worked by lawyers in 2007. *Source: Thomson Reuters*.
9 Thomson Reuters *Stellar Performance: Skills and Progression Mid-Year Survey* 2021, Thomson Reuters Institute, Nov. 2021 ("Skills and Progression 2021 Survey"). Survey conducted in September 2021 of 1,170 client-nominated Stand-Out lawyers (majority Partners) from more than 50 countries across all sizes of law firms.
10 *Id*., at 9.

The reactions of younger lawyers stood in stark contrast to the attitudes of lawyers in the middle-age groups (spanning 40- to 60-year-olds). Lawyers in that cohort were comfortable working 10% more hours than the younger lawyers in the survey.[11]

As firms move back toward "normalcy," it should also be noted that retention issues are not limited to associates. Although it receives far less attention in the legal press, there are also serious retention challenges with respect to professional staff other than lawyers. As noted by one commentator:

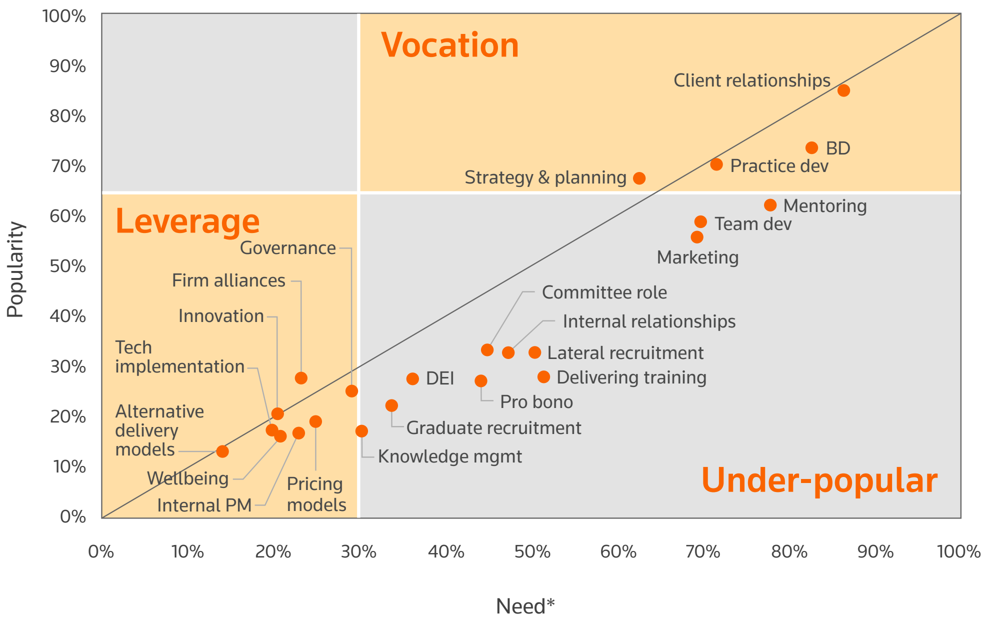
> Taken together, the events of the past 18 months have given business professionals a sense that they deserve better treatment — and some evidence that they've earned it. They have shown that they don't need someone looking over their shoulder to get work done. Now, in a tight talent market, many feel empowered to shop around to improve their compensation and working conditions. Law firms may have to confront something they haven't seen in the legal industry in quite a while: leverage owned by those who are not attorneys.
>
> It may be an oversimplification to say there is a caste system in law firms separating attorneys from everyone else, but there are reasons that trope exists. The pandemic has laid bare some of the ways it manifests, all while redefining the dynamic between attorneys and staff and raising questions about whether those distinctions should continue.[12]

The threat of losing key business professionals is particularly serious given the growing dependence on such persons in most law firms of any significant size. In its *Stellar Performance: Skills and Progression Mid-Year Survey*, Thomson Reuters noted that one change emerging in the post-pandemic world is that most lawyers want to reduce their commitments to non-billable administrative activities that are not directly related to client relationships and business development. As shown in Figure 17 below, lawyers surveyed indicated a strong desire to limit their involvement in such activities as marketing, training, diversity initiatives, lateral and graduate recruitment, and knowledge management, among others. For these latter activities, lawyers appear willing to delegate responsibilities to support professionals and to those partners who might specifically wish to be involved.[13]

11 *Id*. It should be noted that middle-aged lawyers were not seeking more billable hours but rather more time to engage in client relationship building, practice and business development, strategic planning, and the like.
12 Patrick Smith, "Ready for a Change," *The American Lawyer*, Sept. 2021, at 46, 47.
13 *Skills and Progression 2021 Survey*, at 9.

Figure 17: **Popularity gap for recruitment, people development and marketing**

Firm need versus popularity



Vocation = It feels like a calling and people get a lot out of it – most are happy to be involved

Leverage = doesn't need everyone to be involved, just needs to be the right lawyers, leveraging support professionals

Under-popular = fewer people want to be involved than currently are

- **Delegate** to support professionals within the firm
- **Optimize** by making sure partners who do want to be involved have the opportunity
- **Reward** by factoring into compensation

* *Need* is a measurement of the proportion of lawyers who currently have this responsibility.

Base: Current (1155); Ideal (1123).

Source: Thomson Reuters 2022

Firms are responding to this retention crisis in a variety of ways. Almost all firms have ratcheted up compensation, added special work bonuses, or implemented signing or referral bonuses. A few firms have taken measures to try and protect their legal and professional staffs from poaching, including paying lawyers to stay off LinkedIn, removing associate biographies from firm websites, and discouraging networking and bar association involvement that might expose lawyers to competitors. Some law firms have contacted their recently departed lawyers, asking them to come back and promising high-profile work and mentoring. Other firms have promised a shorter timeline for promotions.[14]

Some Midsize firms have taken a more creative approach, providing more work flexibility by basing associate compensation not on hours billed but rather on tasks accomplished and quality of work. Such an approach obviously requires close supervision by practice or team leaders, but it can be an effective way of helping associates maintain more control over their own working lives.[15]

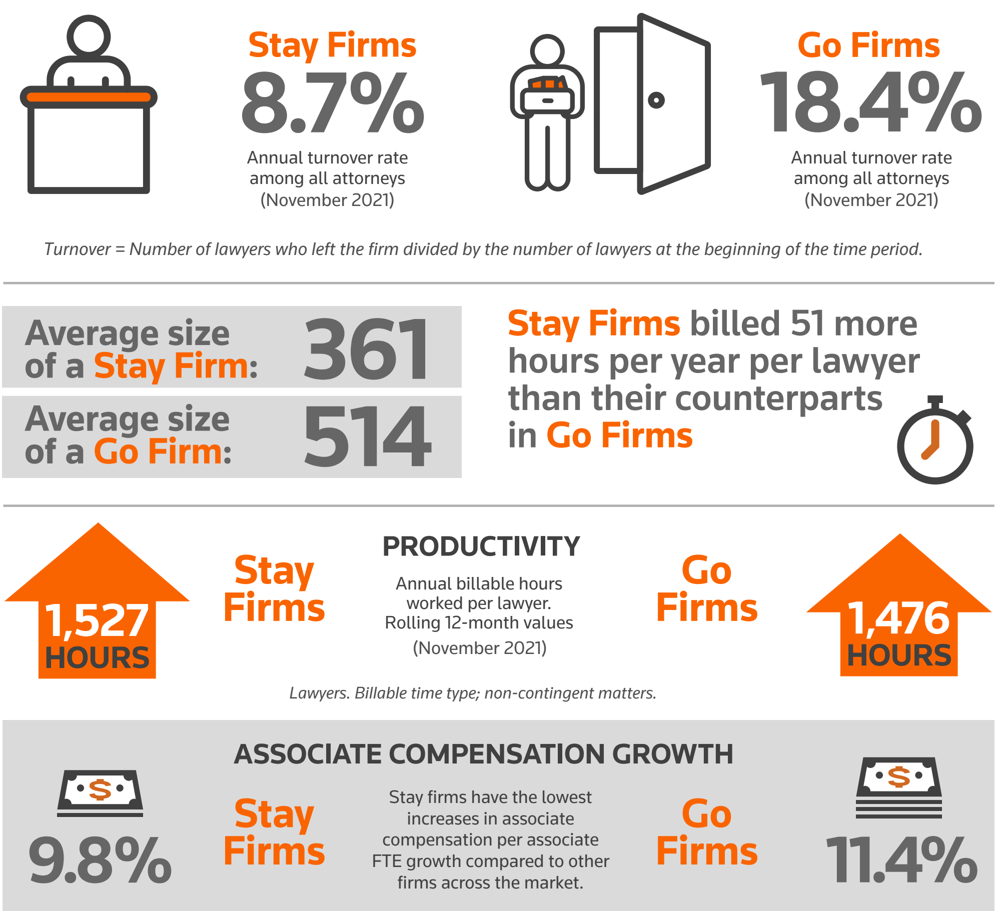
Apart from these economically oriented actions, most firms have also taken a range of steps to provide critical support to both legal and professional staff as they return to the office on some basis. Recognizing that the pandemic has caused increased chronic stress, anxiety, depression, and trauma, many firms have established counseling and wellness programs to assist staff in their return. There are also a wide variety of social and recreational activities planned by many firms to ease the transition and to rebuild firm culture.

14 Lizzy McLellan, *The American Lawyer* (on-line ed.), Nov. 9, 2021.
15 Patrick Smith, "Ready for a Change," *The American Lawyer*, Sept. 2021, at 46, 47.

All of these efforts are important and necessary, but they are likely not sufficient to bend the curve on the rising turnover rate that law firms are experiencing. Achieving that goal will require firms to reimagine their structures and operations in the post-pandemic world to provide the real "glue" that we know is necessary to bind people to organizations — feelings of value and meaning in their work, feeling appreciated and recognized, having opportunities for growth and personal satisfaction, and believing that they are making a contribution to something larger than themselves.

Interestingly, there is data that indicates that some firms are, in fact, succeeding at these efforts. Preliminary results from a special study of Thomson Reuters data to be released in the spring show, as indicated in Figure 18 below, there is a considerable spread between the 25% of firms with the lowest current and historic turnover rates (dubbed "Stay" firms) and the 25% of firms with the highest turnover rates (dubbed "Go" firms).[16] Through November 2021, Stay firms recorded an annual turnover rate of 8.7%, compared to 18.4% for Go firms.

Figure 18: **Stay firms vs. Go firms**



Source: Thomson Reuters 2022

16 In creating these categories, Thomson Reuters ranked law firms according to various turnover classifications and controlled for the individual firm's leverage, which tended in inflate turnover figures. The resulting analysis allows for a closer look at the "glue" which holds lawyers to their firm, rather than the innate structure of headcount.

The analysis also shows that Stay firms have unique and somewhat surprising characteristics that set them apart from other firms in the market. First, low-turnover firms tend to be smaller than others, with the average size of a Stay firm being 361 lawyers (even after adjusting for firm leverage). That compares to an average size of 514 lawyers among the 25% of firms with the highest turnover rates. This does not, of course, mean that larger firms inevitably have high turnover. Indeed, more than 24% of *low-turnover* firms are in the Am Law 100. It may mean, however, that the larger (and perhaps more dispersed) a law firm becomes, the harder it is to create the cultural glue necessary in the organization and the more focused firm leadership needs to be on issues like retention and employee engagement.

Second, the data indicates that Stay firms have consistently higher productivity (in terms of billable hours per lawyer) than other firms. Indeed, through November 2021, lawyers in Stay firms billed 51 more hours per year than their counterparts in Go firms. If measured by the average hourly worked rate of $533 for all firms across the market, that difference accounts for $27,183 per lawyer per year. Although still preliminary, this finding suggests that, contrary to popular belief, high law firm turnover rates may not be as driven by increased working hours as many have supposed.

"Of course, compensation is important, but real satisfaction comes from other less tangible factors."

And third, preliminary data shows that Stay firms have the lowest increases in associate compensation per associate FTE growth compared to other firms across the market. Taken together, this data clearly suggests that the loyalty that lawyers feel to their firms and the willingness they have to work hard is not simply, or even primarily, driven by compensation. Of course, compensation is important, but real satisfaction comes from other less tangible factors.

These factors should not be taken as a suggestion that lawyers are happy staying at firms that work them harder and pay them less. In fact, there is compelling evidence to the contrary. But these preliminary findings, which will be explored in more depth later this year, suggest that lawyers who are more likely to stay at their current firms are more productive and are not staying because of market-leading pay increases.

Navigating the hybrid work model

It is now clear that one of the enduring effects of the COVID-19 pandemic will be the so-called hybrid work model, combining both remote work with some amount of in-office time. Although law firms are currently "all over the lot" in terms of the appropriate hybrid mix, there seems to be some emerging consensus that most firms will probably require about three days a week in the office for most lawyers. Determining that requirement, however, is the easy part. For most law firms, actually implementing hybrid working arrangements will not be a simple matter.

While most lawyers favor the hybrid approach, there are also strong concerns about the format and overall fairness of such arrangements, including worries about the impact of hybrid arrangements on lawyer assignments, evaluations, advancement, compensation, and mentoring and coaching. As one observer noted in a recent *Harvard Business Review* article on law firm hybrid transitions:

> Going from a totally remote or totally office-centric workplace to a hybrid arrangement is a major culture shock. There will be turbulence. People working from home may feel left out. In-office workers may suspect their colleagues aren't putting in a full day's work and grow resentful. New employees may struggle to connect with new colleagues they may never meet.
>
> Consequently, leaders must give a lot of thought to how they'll create bonds between people and maintain and shape the company's culture. This will require managers to be active, involved, and creative. They must reach out and create ways for people to get together, seizing opportunities for in-person interaction whenever possible…
>
> Lastly, any vestige of suspicion that people not present in the office can't be hard at work must be erased. Employees and managers will have to learn how to build trust through meeting objectives, not the sight of someone sitting in front of a screen.[17]

Apart from the obvious logistical challenges of providing guidance and oversight by capable team and practice leaders, the implementation of hybrid working arrangements presents the equity challenge of neutralizing the often unconscious bias of "out of sight, out of mind." It also forces firms to consider the "casual assignments" that can arise from stopping by someone's office or the impression of "busy-ness" from seeing someone in the office late or on a weekend. These are all issues of concern for persons who may be working on a largely remote basis and may be especially acute concerns for female lawyers.

There are also potential equity issues with respect to law firm professional and support staff. While most firms have clearly focused on hybrid working arrangements for lawyers, many have failed to think through similar approaches for their professional and support staff. That, in turn, has led to feelings of resentment. As one commentator observed:

> [A]ssociates are more bullish on a hybrid future than nonlawyer professionals, some of whom would be happy to leave their commutes in the past. It's a reminder that the deepest rift within law firms isn't between generations but between lawyers and staff — and that firms have no easy task trying to keep everyone satisfied as they welcome their teams back to the office… A number of staffers… fear that a return to the office will inherently be a return to second-class citizenship.[18]

17 Robert Sher, "Lessons from One Law Firm's Pre-Pandemic Shift to Hybrid Work," *Harvard Business Review* (on-line ed.), June 23, 2021.
18 Dan Packel, "A Workforce Divided," *The American Lawyer*, Sept. 2021, at 25.

To deal effectively with these challenges, law firms will need to provide different and more effective mechanisms for supervision and oversight, training, support, and the development of firm culture and comradery. Without careful attention to these issues, hybrid working models may result in far more problems than benefits for many law firms.

Remaining operationally flexible

If there is one lesson we've learned from the pandemic experience of the past two years, it is that law firm leaders must remain flexible in responding to rapidly changing events. Actually, law firms — for the most part — did quite a remarkable job of adjusting to the new realities of work during the COVID-19 pandemic crisis.

By Spring 2020, the legal industry had successfully migrated to a totally remote working environment with surprising agility and in an astonishingly short period of time, often literally a few days. Firms were also able to adjust their return-to-the-office plans to accommodate the uncertainties of emerging new variants. Such operational flexibility will continue to be critical as law firms move into 2022.

> ***"If there is one lesson we've learned from the pandemic . . . it is that law firm leaders must remain flexible in responding to rapidly changing events."***

From an operational standpoint, the pandemic has already altered our thinking in several fundamental ways. *First*, the pandemic has conclusively demonstrated that remote working can be done successfully. In fact, disruptions resulting from work-at-home arrangements were less serious than most firms expected. Thomson Reuters reports that the number of lawyers who now want to work remotely at least one day a week has doubled from pre-pandemic levels and is now at about 86% of lawyers.[19] Clearly, hybrid working arrangements are here to stay.

Second, the pandemic has shown that remote working does not necessarily result in lower productivity. As previously illustrated,[20] YTD productivity levels through November 2021 were essentially the *same* as productivity levels during the same period in 2019. This is consistent with findings from other professional service industries as well.

Third, the pandemic has broadened the acceptance of the role of technology in the effective delivery of legal services. Despite expense cuts, law firms increased their technology spend by 7.1% during the 12-month period through November 2021.[21]

Fourth, the pandemic has shown that firms can achieve more efficiency through some operational changes, including:

- adapting to more efficient use of office and administrative space;

19 Source: Thomson Reuters, from *2021 Annual Stellar Performance Survey*.
20 *See* Figure 9, *supra*.
21 *See* Figure 13, *supra*.

- rethinking changes in staffing and work patterns;
- altering levels of secretarial support;
- reducing expectations for in-person meetings, and
- cutting "unnecessary" business travel.

And *fifth*, the pandemic has demonstrated the importance of sound financial practices, encouraging many firms to more rigorously manage timekeeping, billings, and collections. These efforts have resulted in noticeable upticks in cash collections and a shortening of most firms' billing and collection cycles.[22]

Moving forward, firms will need to incorporate all of these learnings into their own strategies, which of course, will require continued openness and flexibility.

A key element of a successful strategy is the centering of all a firm's operations and activities around its key value proposition. Whatever successes that law firms have achieved in reaching such alignment in the past, the pandemic has — through no fault of the firms themselves — thrown them off-center. In response, firms need to take deliberate actions to establish a new "normalcy" that can successfully support their strategies going forward. This will require firm leadership to be fully engaged, transparent, and accountable for leading their firms in the coming transition.

Key actions that should be considered include:

- establishing clear written plans and policies laying out the firm's expectations regarding employees' return to the office, safety protocols, and hybrid work arrangements;
- delivering frequent and empathetic communications tailored around the realization that different persons will be dealing with return-to-work issues in different ways;
- providing resources for lawyer and professional staff support through wellness and mental health programs;
- offering adequate technical and administrative support for work-at-home arrangements;
- taking a flexible approach to remote work, part-time work, and flex-time arrangements;
- developing policies and procedures to assure equity and fairness in assignment, evaluation, compensation, and promotion decisions, especially in regard to lawyers and professional staff taking advantage of remote working arrangements;
- creating policies and procedures to provide adequate supervision and oversight for remote working situations;

22 Gretta Rusanow, Managing Director and Head of Advisory Services, Law Firm Group, Citi Private Bank, Remarks at The 20th Annual Law Firm COO & CFO Forum, Oct. 28, 2021.

- modifying training programs to treat lawyers and professional staff equitably regardless of their in-person or remote working status;
- making appropriate investments in technology to keep the firm on the cutting edge of digital communications and artificial intelligence-assisted work processes; and
- finding additional ways to foster social engagement and comradery within the firm.

For the near term, law firms need to pay particular attention to helping their lawyers and professional staff recover from what has been a traumatic and life-changing experience since the onset of the pandemic. And it is important to remember that what emerges in this process *will* be different from what firms had in place before.

The pandemic forced most people to reflect on their lives in new ways, and it resulted in many people altering their personal values, reassessing their work-life balance, and rethinking their professional commitments. Law firms must find a way to align these changes in a manner that can support and enhance each firm's basic strategy — and leadership flexibility will be the key to making that happen.

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