

Colorado's New Well-Being Recognition Program Makes Good Business Sense for Legal Employers

BY MARK FOGG AND TONY MOORE

The legal community has been put on notice that lawyers and law students disproportionately suffer from mental health and substance use disorders.¹ As a result of a multiyear effort by members of the Colorado Supreme Court's Task Force on Lawyer Well-Being, spanning years before and after the COVID-19 pandemic, the Colorado Well-Being Recognition Program for Legal Employers officially launched in January 2023 under the leadership and oversight of the Colorado Attorney Mentoring Program (CAMP), an office of the Colorado Supreme Court.² The problems facing the legal profession that prompted the formulation of local and national task forces have only compounded since the start of the pandemic. Now is the time for law firms and other legal employers that have not undertaken efforts to promote mental health and well-being initiatives within their businesses or organizations to act. It is not only the right thing to do. It makes rational business sense.

Identifying the Challenges

The problem of mental illness and substance abuse within the legal profession is well-documented. "Indeed, for more than 30 years, a significant number of studies, articles, and reports have demonstrated the prevalence of depression, anxiety, and addiction in the legal profession."³ Two recent national studies, both published in 2016, reported "dramatically higher percentages of alcohol and drug abuse, depression and anxiety, and attempted and

completed suicide [among attorneys and law students] when compared with the general population."⁴

This problem is costly not only to individuals, but also to legal employers, whose greatest asset is their attorney workforce.⁵ Some of the main costs to law firms include reduced productivity from absenteeism, presenteeism, burnout, high attrition rates, and lawyer discipline and sanctions.⁶ Attorney turnover continues to be extremely expensive for firms.

Sources of the problem are varied and include "social alienation, work addiction, sleep deprivation, job dissatisfaction, a 'diversity crisis,' complaints of work-life conflict, incivility, a narrowing of values so that profit predominates, little time for mentoring and a negative public perception."⁷ Other contributors include lawyers' lack of autonomy, law firms' reliance on the billable hour to make unidimensional assessments of lawyers, low-decision latitude among junior lawyers, and law firm culture that is hostile to values held by individual lawyers.⁸ Another significant factor is the stigma associated with those issues.⁹

Fortunately, there are ways to mitigate these sources and their attendant costs. Legal employers can start by joining the Colorado Supreme Court's Well-Being Recognition Program for Legal Employers. As detailed in the March 2023 issue of *Colorado Lawyer*, this program provides support, incentives, and resources to legal organizations as they implement well-being practices in their workplaces.¹⁰

Cost-Effective Wellness Strategies

In 2021, our law firm, Childs McCune, LLC, participated in the Well-Being Recognition Pilot Program. One author of this article chaired the Colorado Task Force Business Case Committee, which studied this issue and made extensive recommendations to legal employers.¹¹ As a direct result of our participation in the pilot program, we established a Mental Health and Well-Being Committee to guide us in confronting mental health and well-being challenges in a cost-effective manner. The creation of this committee alone made our participation in the pilot program worthwhile.

We hope that other legal organizations can draw upon what we learned through our work. Below are three recommended strategies for promoting wellness that are both cost effective and accessible to most firms.

Work on Shifting the Firm's Culture

Although law firms should be profit-making businesses, they can mitigate the costs associated with the mental health and well-being crisis through subtle changes in firm culture. A culture shift doesn't happen overnight—attorney well-being needs to get on "the frontal lobe" and be on the forefront of decision making. Perhaps the most important step is to talk openly about these issues to reduce the stigma associated with help-seeking behavior. Society at large has already begun to recognize the importance of openness to addressing mental health issues, and it is time that law firms catch up in order to attract and retain legal talent.¹² Today's high-quality attorney applicants seek firms with a well-being culture that inspires them to apply and makes them want to keep working there.

Values matter and are an important aspect of workplace culture. Efforts to promote diversity, equity, and inclusiveness (DEI) in legal workplaces empower lawyers and staff and improve overall mental health and well-being.¹³ At Childs McCune, we reoriented our DEI Committee to work collaboratively with our Well-Being Committee. Although we are tied to the billable hour, as are many firms, we long ago established specific firm values that placed the profit motive in perspective. We communicate

those values to employees and model those values as a firm. This allows employees the freedom to focus on addressing different aspects of well-being that we recognize as a firm.¹⁴ Although billable hours are a necessary part of evaluating employee performance, we also evaluate employees based on their alignment with firm values. Firms can give additional weight to such considerations to improve the experience of law practice.

Draw on Existing Resources

Legal employers can take advantage of existing resources to address the mental health and well-being challenges stemming from the demands and adversarial nature of the legal profession. Our firm has made efforts to inform employees of their access to an employee assistance program. Many legal employers have such programs available to their employees and their family members—but these programs only work if employees know about them.

Firms should also remind lawyers and staff that the practice of law is hard and that the Colorado Lawyer Assistance Program (COLAP) is available to them if they need help with personal or professional struggles.¹⁵ Through its leadership and workplace culture consultation program, COLAP has generously provided several presentations to our firm on important mental health and well-being topics that qualify for ethics CLE credit.


A variety of wellness resources are also available to firms through the Well-Being Recognition Program, the Institute for Well-Being in Law,¹⁶ and the American Bar Association's Well-Being Toolkit for Legal Employers.¹⁷

Make Mentoring a Priority

Legal employers can also promote the mental health and well-being of their employees through mentoring. Not only is mentoring an important component in reinforcing attorney competence, it also helps reduce alienation, isolation, and anxiety in newer lawyers.¹⁸ Mentor-mentee relationships improve the experience of law practice for everyone involved. Effective mentoring by senior lawyers can also help inculcate firm values such as service and client satisfaction to further improve the experience of law practice. CAMP¹⁹ and the Colorado Women's Bar Association LIFT! Mentorship Program²⁰ are two excellent mentoring resources.

Conclusion

There are many cost-effective strategies legal employers can use to evaluate and improve the culture of their workplace. Establishing values that honor both the success of the business and the well-being of their employees is a good place to start. Employers can also learn more about existing resources for improving workplace culture and employee mental health and

well-being. Legal employers can consider ways they can connect employees to these resources without stigmatizing asking for help. Offering opportunities for mentorship is another way to support the well-being of employees who may benefit from modeling and coaching of firm values. Law firms can attract and retain legal talent, improve productivity, and reduce the costs associated with the crisis of mental health and well-being that has long plagued the legal industry. 



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To promote well-being, resiliency, and competency throughout Colorado's legal community.

The Colorado Lawyer Assistance Program (COLAP) is the free, confidential, and independent program for Colorado's legal community. COLAP offers free well-being consultations for: Stress & Burn-out * Secondary Trauma & Compassion Fatigue * Work-life balance * Free ethics CLE presentations * Improving well-being in the workplace * Personal or professional issues * Mental health, trauma, substance use, or addiction concerns * Referrals to resources.

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NOTES

1. See e.g., National Task Force on Lawyer Well-Being, "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change" 7 (Aug. 2017), <https://lawyerwellbeing.net/the-report>.
2. The final report of the Colorado Supreme Court Task Force on Lawyer Well-Being (Nov. 2021) (hereinafter, Colorado Task Force Final Report) can be found at <https://judicialwellbeing.colorado.gov/colorado-task-force-report>. The website for the Colorado Well-Being Recognition Program for Legal Employers is <http://coloradolawyerwellbeing.org>.
3. Reich, "Capitalizing on Healthy Lawyers: The Business Case for Law Firms to Promote and Prioritize Lawyer Well-Being," 65 *Vill. L. Rev.* 361, 364 (2020) (citations omitted).
4. "A Profession at Risk: Report of the Committee on Lawyer Well-Being of the Supreme Court of Virginia" 3 (2018), <https://vjlap.org/wp-content/uploads/2019/11/SCV-A-Profession-At-Risk-Report.pdf> (citing Krill et al., "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," 10(1) *J. of Addiction Med.* 46 (Jan./

- Feb. 2016); Organ et al., "Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns," 66(1) *J. of Legal Educ.* 116 (Autumn 2016)).
5. See, e.g., Colorado Task Force Final Report, Executive Summary. See also Reich, *supra* note 3 at 396-400.
6. See Reich, *supra* note 3 at 396.
7. "The Path to Lawyer Well-Being," *supra* note 1 at 7. See also, e.g., Colorado Task Force Final Report, Business Case Committee Report, Law Firm and Legal Employer Challenges (noting challenges unique to private practice).
8. See Reich, *supra* note 3 at 382-88.
9. See *id.* at 392-95. See also Colorado Task Force Final Report, Executive Summary, A Problem (citations omitted); Hersh, "The Pursuit of Attorney Well-Being: How Organizations Can Ethically Assist Attorneys with Mental Health and Substance Abuse Issues," 50 *Colo. Law.* 18 (Apr. 2021), <https://cl.cobar.org/departments/the-pursuit-of-attorney-well-being>.
10. "Introducing the Colorado Well-Being Recognition Program for Legal Employers," 52 *Colo. Law.* 48 (Mar. 2023), <https://cl.cobar.org/departments/introducing-the-colorado-well-being-recognition-program-for-legal-employers>.

11. Colorado Task Force Final Report, Appendix 1, Business Case Committee recommendations.
12. See Reich, *supra* note 3 at 406-07, 414-18.
13. Colorado Task Force Final Report, Appendix 1, Business Case Committee recommendations.
14. See, e.g., Colorado Task Force Final Report, Executive Summary (discussing how the National Task Force defined lawyer well-being as "multi-dimensional, encompassing an individual's intellectual, occupational, emotional, social, physical, and spiritual well-being." (citation omitted)).
15. COLAP resources are available at <http://coloradolap.org>.
16. <http://lawyerwellbeing.net>.
17. <http://ABAJournal.com/toolkit>.
18. See Reich, *supra* note 3 at 386.
19. <http://coloradomentoring.org>.
20. <http://cwba.org/CWBALIFTMentorship>.

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