



The State Bar of California

Impaired Colleague?

Addressing Attorney Competence, the Warning Signs, and Getting Help

Lita Abella, Senior Program Analyst
Lawyer Assistance Program

City Attorneys Spring Conference, May 19, 2023

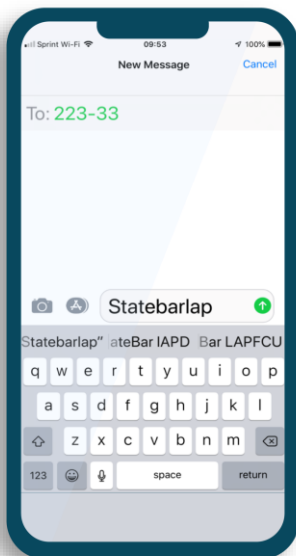


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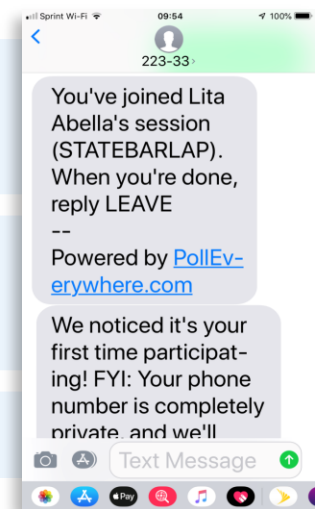
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Objectives

- ✓ Identify and detect substance use and mental health issues among attorneys
- ✓ Discuss an attorney's duties regarding an impaired colleague
- ✓ Explain how to discuss possible impairment issues with a colleague
- ✓ Develop a self-care plan and wellness strategies
- ✓ Know where to find help: the Lawyer Assistance Program (LAP) and other resources

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How long have you been practicing?

- 0-5 years **A**
- 6-10 years **B**
- 11-20 years **C**
- 20-30 years **D**
- over 30 years **E**

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What type of law do you practice?

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**Do substance use and/or mental
health issues affect attorney
wellness?**

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Stress, Drink, Leave

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An Examination of Gender-Specific Risk Factors for Mental Health Problems & Attrition Among Licensed Attorneys (2021)

Depression, anxiety, and stress **higher in attorneys** compared to general population and other professional populations.

Females and younger attorneys experienced worse mental health problems.

Younger attorneys were **2-4x** more likely to report moderate to high stress.

24% of female attorneys v. 17% of male attorneys considered leaving the legal profession due to mental health problems, burnout, or stress.

Top reason female attorneys considered leaving is due to **work overcommitment**.

Increase in Covid drinking was **7x higher in female attorneys** v. 3.7x higher in male attorneys.

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People, Professionals & Profit Centers

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The Connection Between Lawyer Well-Being and Employer Values, 6/3/22

62% of lawyers reported feeling most valued for their personal or professional attributes

28% of lawyers reported feeling most valued for attributes like productivity and responsiveness

10% of lawyers who believed their employers did not value them or did not receive enough feedback had the poorest mental and physical health

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PEOPLE, PROFESSIONALS & PROFIT CENTERS:

The Connection Between Lawyer Well-Being & Employer Values*

A health hierarchy appears linked to the value systems of employers & their ability to effectively communicate those values by providing adequate feedback.

Respondents were split into three groups based on their responses to the question: What do you feel your employer values most about you?

Group 1
FEELS VALUED FOR:
Talent, Skill & Humanity

Group 2
FEELS VALUED FOR:
Productivity & Financial Worth

Group 3
FEELS VALUED FOR:
Unvalued or No Feedback

Distribution of Respondent Groups

62% Best health
Lowest risk of attrition

28% Worse Health
Higher risk of attrition

10% Worst health
Highest risk of attrition

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Losing Our [Best] Minds: Addressing Attrition Crisis of Women Lawyers in a Post-Pandemic World



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By Bree Buchanan, Jodi Cleesattle, Kathy Goshtasbi, published 12/20/22

Study revealed women lawyers leaving the workforce due to:

- 58%-care taking commitments
- 54%-level of stress at work
- 51%-emphasis on originating business
- 50%-billable hours
- 49%-no longer wishing to practice law
- 46%-work-life balance
- 42%-health concerns



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Stressed, Lonely, and Overcommitted: Predictors of Lawyer Suicide Risk



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published 2/11/23

Key findings:

- Lawyers 2x as likely than the general population to experience suicidal ideation
- Lawyers with high stress 22x more likely to contemplate suicide
- Lonely lawyers were 3x more likely to have suicidal thoughts
- Male lawyers 2x as likely to contemplate suicide



Key takeaways for legal employers and other stakeholders:

- Collaboration and regular social interactions in work environment
- Avoid alcohol-based events as primary means of socialization and connection
- Raising awareness of the downsides of being too committed to work
- Encourage lawyers to set boundaries in the lives

<https://calawyers.org/california-lawyers-association/lawyers-high-stress-contemplate-suicide/>

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TYPES OF SUBSTANCE USE AND MENTAL HEALTH ISSUES

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What are the signs when someone is not well? Something is not right?

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SIGNS OF SUBSTANCE USE

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Have you or a lawyer you care about:



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- Failed to show up at the office or appear in court because you had a hangover?
- Frequently missed appointments with clients?
- Showed up drunk at court or for a deposition?
- Been drinking or using drugs during office hours?
- Used, misused, borrowed client, or third-party funds or property?
- Regularly had more than one drink at lunch?
- Had to have another lawyer make your court appearance for you because you were hung over?
- Missed deadlines, filed pleadings late, allowed a statute of limitations to run?
- Needed a drink because something good or bad happened?

(Idaho LAP, Reference Manual, April 2022)

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Do you have a drinking/drug problem?

The CAGE-AID questions:



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- ✓ **Cut down:** Have you ever felt the need to **cut down** on your drinking or drug use?
- ✓ **Annoyed:** Have you ever been **annoyed** by criticism of your drinking or drug use?
- ✓ **Guilty:** Have you ever felt **guilty** about your drinking or drug use?
- ✓ **Eye-Opener:** Have you ever had a morning **eye-opener**, used alcohol/drugs first thing in the morning to get started or to relive withdrawal?

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How often do you feel overwhelmed at work?

Occasionally

Once a month

Weekly

Every day

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SIGNS OF STRESS

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Stress Indicators



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Physical Symptoms

- Pounding heart
- Tightened stomach
- Neck and back pain
- Headaches
- Mouth and throat dryness
- Insomnia
- Disruption of digestion



Personality Changes

- Emotional tension and alertness
- General irritability
- Listlessness
- Depression
- Hyper-excitation
- Diminished self-esteem



Behavioral Symptoms

- Inability to sit still and concentrate
- Self-medicating; increased smoking, drinking, use of drugs
- Loss or increase in appetite
- Prone to accidents
- Isolation

Impact on Professional Performance

- Procrastination
- File stagnation; cases and project not moving forward
- Failure to respond to phone messages
- Making excuses
- Lowered productivity

(Idaho LAP, Reference Manual, April 2022)

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How to Deal with Stress



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Seven Tips to Reduce Lawyer Stress Levels by Charlie Braithwaite, 6/27/22

1. Accept that you are not alone.
2. Find a workplace that supports you.
3. Create law firm processes.
4. Utilize legal technology.
5. Offer alternative arrangements.
6. Hire a paralegal to help with your workload.
7. Find a legal mentor.




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Other Types of Impairment Issues The State Bar of California

Senior/Aging Attorneys


SIGNS & SYMPTOMS




Forgetfulness




Attention




Reasoning, Planning,
or Problem Solving






Impaired Judgment



Depth Perception



Language

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What is the percentage of Calif. attorneys that are over the age of 65?

8%

18%

28%

38%

A

B

C

D

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Senior/Aging Attorneys

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California Attorneys

- 265,572 total attorneys
- Average age of attorneys, 60 years old
- 75,218 or 28% attorneys are over 65 years of age
- 7,597 or 3% of attorneys are under the age of 30
- 105,124 or 40% of attorneys are female

(State Bar data as of Oct. 2022)



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Senior/Aging Attorneys

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Mild Cognitive Impairment, Eyewitness News-WBRE 28, 3/12/22, 2:11 minutes



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Dementia



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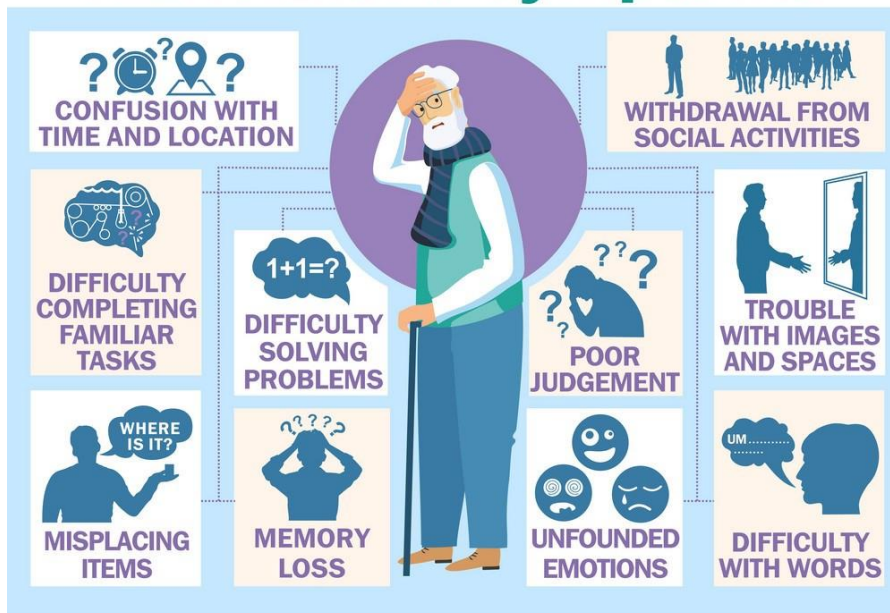
- Set of symptoms triggered by a loss of brain function that can affect memory, thinking, language, judgment, and behavior.
- A person may not be able to do normal activities, such as getting dressed or eating.
- They may be quick to anger or forget things they just learned.
- American Academy of Neurology estimates that 10% of people over age 65 have some form of dementia and up to 50% over the age of 85 experience dementia.
- Dementia is caused by changes in the brain that happen over time.

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Alzheimer's Symptoms



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A Wellness Guide for Senior Lawyers and their Families, Friends, and Colleagues

- Helps legal professionals take the necessary steps to address health problems that may impact their work.
- Discuss the signs of dementia and other health problems that can impair cognitive skills and alter behavior.

www.calbar.ca.gov/lap



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To address cognitive impairment, an attorney should consider:

- Seeking medical treatment
- Making plans for their practice
- Appointing a successor attorney, and
- Closing the law practice



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CLARITY
LEADS TO

CONFIDENCE
LEADS TO

COMPETENCE

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Rule 1.1 Competence

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Rule 1.1 Competence
(Rule Approved by the Supreme Court, Effective March 22, 2021)

- (a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) **mental, emotional, and physical ability** reasonably necessary for the performance of such service.
- (c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes* to be competent.

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Standing Committee on Professional Responsibility and Conduct

Formal Opinion No. 2021-206

Colleague Impairment



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Addresses mental impairment that impede a lawyer's fitness to competently and diligently engage in the practice of law:

- Responsibilities of the impaired lawyer
- Responsibilities of other lawyers
- Responsibilities of subordinate lawyers
- Responsibilities of lawyers with managerial or supervisory authority

<https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/Formal-Opinion-No-2021-206-Colleague-Impairment.pdf>

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Standing Committee on Professional Responsibility and Conduct

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Colleague Impairment



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What do you do?

You are subordinate lawyer that has observed:

- Impaired Lawyer appeared confused
- Impaired Lawyer has missed client meetings without explanations
- Impaired Lawyer has failed to communicate with client
- Impaired Lawyer discussed facts and strategies that obviously do not apply to Client's matter
- Impaired Lawyer failed to communicate a settlement offer to Client
- You raised these ethical issues with Impaired Lawyer
- Impaired Lawyer denied having any problems
- Impaired Lawyer admonished you and told you not to discuss anything with Client


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Standing Committee on Professional Responsibility and Conduct

Formal Opinion No. 2021-206

Colleague Impairment



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Possible Violations:

- RPC 1.1-Competence
- RPC 1.3-Dilligence
- RPC 1.4-Communication with Clients
- RPC 1.4.1-Communication of Settlement Offers
- RPC 1.16-Declining or Terminating Representation
- RPC 5.1-Responsibilities of Managerial and Supervisory Lawyers


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Standing Committee on Professional Responsibility and Conduct

Formal Opinion No. 2021-206

Colleague Impairment



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Possible Recommendations:

Subordinate Lawyer must take timely reasonable remedial measures.

Subordinate Lawyer will need to communicate with Client:

- Significant developments and other important information
- Impaired Lawyer is unable to continue as counsel
- Impaired Lawyer failed to communicate the settlement offer
- Recommendations of how Client's matter could be handled

Subordinate Lawyer may seek guidance from Ethics hotline and the LAP.

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Standing Committee on Professional Responsibility and Conduct

Formal Opinion No. 2021-206 Colleague Impairment



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A mental impairment that impedes a lawyer's ability to competently and ethically provide legal services triggers ethical obligations not just for the impaired lawyer, but also for certain lawyers who know of the conduct.

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Competency Issues: Having "The Talk"



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Michelle Harmon, LCSW, LAP, August 2020



- Does your employer have an established policy?
- Analyze your own biases and stereotypes
- Discuss specific events
- Have resources available
- Listen
- Be prepared for defensiveness

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<https://calawyers.org/california-lawyers-association/competency-issues-having-the-talk/>

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Talking to a Colleague



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Conversation starters:

- “It sounds like you have been going through a difficult time. What can I do to support you?”
- “Although there may be things out of my control to change, I would like to problem solve and support you in ways that I can.”
- “Is there anything I can do to make you feel supported?”
- “Talk me through some of your concerns.”



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What could happen if attorneys do not get help?



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Just Ask: We Must Stop Minding Our Own Business in the Legal World



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TX Lawyer Assistance Program & Lawyers Concerned for
Lawyers of Penn., 6/28/21, 5:35 minutes



The following 5-minute 35 seconds video clip involves discussion of serious mental health circumstances including **suicide**. If you have experienced trauma, loss, or other difficulties involving depression or suicide and are unsure if stories on these topics might cause you distress, please consider taking steps to prepare yourself before viewing this film. You can watch the entire 30-minute video on the TX LAP website or YouTube.

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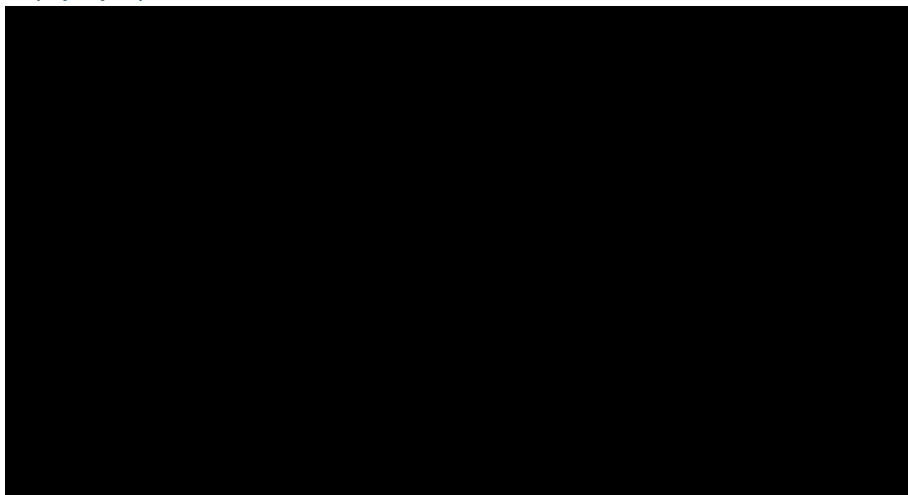
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Just Ask: We Must Stop Minding Our Own Business in the Legal World



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TX Lawyer Assistance Program & Lawyers Concerned for
Lawyers of Penn., 6/28/21, 5:35 minutes



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Your thoughts on this subject

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Resources

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Do you have a well-being policy in your workplace?

Yes No

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Wellness Strategies and Self-Care Plan

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ABA Well-Being Toolkit For Lawyers and Legal Employers

- Is there a policy regarding substance use and mental health issues?
- Does the policy explain an attorney's ethical obligations relating to their own or their coworker's impairment?
- Is there a leave policy that would realistically support time off for substance use and mental health treatment?
- Are there regular communications about the importance of well being?
- Do employee health plans include coverage for substance use and mental health treatment?



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Losing Our [Best] Minds: Addressing Attrition Crisis of Women Lawyers in a Post-Pandemic World



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By Bree Buchanan, Jodi Cleesattle, Kathy Goshtasbi, published 12/20/22

Recommendations for Legal Employers:

1. Offer flexible employment
2. Prioritize employee well-being
3. Enhance leadership training and development
4. Promote connection and sense of belonging



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Losing Our [Best] Minds: Addressing Attrition Crisis of Women Lawyers in a Post-Pandemic World



The State Bar of California

By Bree Buchanan, Jodi Cleesattle, Kathy Goshtasbi, published 12/20/22




Recommendations for Legal Professionals:

- Learn about the well-being crisis in the legal profession
- Evaluate legal employers to see which ones align with your needs
- Assess the legal employer's culture and prioritize the well-being of its personnel

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U.S. Surgeon General’s Framework for Workplace Mental Health & Well-Being, 2022


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Workplace mental health and well-being impacts:

- Workers and their families
- Organizational productivity
- Bottom line for businesses
- U.S. economy

Between March 2020 and mid-2022, there was a rise in:


- Anxiety
- Depression
- Social isolation
- Job burnout
- Insecurity related to food, housing, and income

In 2021, 11,000 workers in the US revealed:

- Nearly 80% of workers report that workplace stress affects their relationships with friends, family, and coworkers
- Only 38% of those who knew about their organization’s mental health services would feel comfortable using them

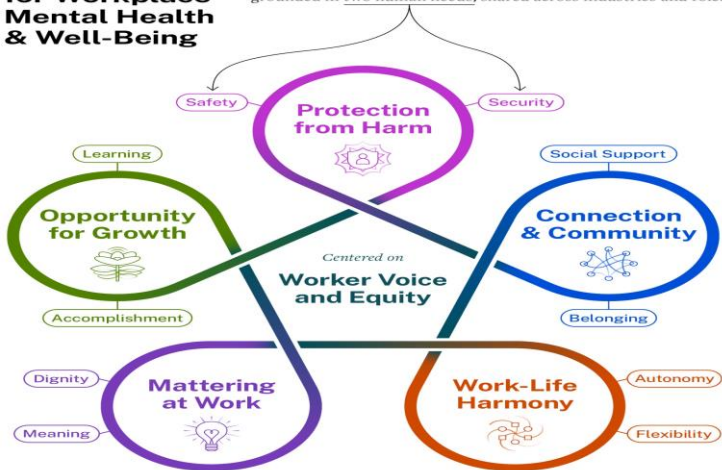
<https://www.hhs.gov/surgeongeneral/priorities/workplace-well-being/index.html>

U.S. Surgeon General’s Framework for Workplace Mental Health & Well-Being, 2022


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Five Essentials for Workplace Mental Health & Well-Being

Centered on the worker voice and equity, these five Essentials support workplaces as engines of well-being. Each Essential is grounded in two human needs, shared across industries and roles.



Wellness Strategies and Self-Care Plan



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What do you do to prevent burnout, stress, or anxiety?

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4 steps to mental well-being

Wellness Strategies & Self-Care Plan



Sleep Well

Good-quality sleep makes a big difference in how we feel mentally and physically.



Exercise

Being active is great for your physical health and fitness.



Eat well

A balanced diet has a major impact on how we feel.



Meditate

Meditation provides a sense of calm, peace and balance that also benefits overall health.

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Wellness Strategies & Self-Care Plan


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TIPS FOR BETTER SLEEP



DO'S

- Have a relaxing wind-down routine
- Optimize the bedroom environment

DONT'S

- No electronics at least 30 minutes before bedtime
- Eliminate or reduce long day naps

- Stick to a schedule
- Take a relaxing bath
- Take Melatonin or other supplements, if needed



- Don't eat late at night
- Don't drink alcohol or caffeine before bedtime
- Don't exercise right before bedtime



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Wellness Strategies & Self-Care Plan

Benefits of Exercise

ENDURANCE

Endurance exercises such as cardiovascular exercises lower blood pressure, regulate weight, and strengthen the immune system.

STRENGTH TRAINING

Strength training such as weight lifting helps make the bones stronger, improves brain health, and keeps muscles strong.

FLEXIBILITY

Flexibility exercises such as stretching, yoga, and Pilates help improve blood flow, reduce fatigue, and improve overall well-being.

BALANCE

Balance movement helps to improve balance and prevent falls. Tai Chi is a moving meditation. Move slowly, gently, and precisely while breathing deeply.

150 MINUTES OF EXERCISE A WEEK

Try to include exercise in your daily activities. Any movement is better than none!

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Wellness Strategies and Self-Care Plan

Balanced diet and nutritious healthy food



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Meditation and Mindfulness



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BENEFITS OF MEDITATION AND MINDFULNESS



- 1 GAIN A NEW PERSPECTIVE ON STRESSFUL SITUATIONS**
- 2 BUILD SKILLS TO MANAGE STRESS**
- 3 INCREASE SELF-AWARENESS**
- 4 FOCUS ON THE PRESENT**
- 5 REDUCE THE NEGATIVE EMOTIONS**
- 6 INCREASE IMAGINATION AND CREATIVITY**
- 7 INCREASE PATIENCE AND TOLERANCE**
- 8 IMPROVE SLEEP QUALITY**





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California Lawyer Assistance Program


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- Supports law students, State Bar applicants, and attorneys in their rehabilitation and competent practice of law
- Enhances public protection
- Maintains the integrity of the legal profession
- Assists participants with substance use and mental health issues

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California Business and Professions Code section 6234



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- Confidentiality is absolute unless waived by the participant.
- Or mandated reporting by a health care professional.
- Information cannot be disclosed as part of a civil proceeding, disciplinary proceeding, or public records request.



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What California LAP Can Do for You



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**Free short-term
career counseling**



**Free one-on-
one sessions**



**Free orientation
& assessment**



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Contact LAP



Toll free:

877-LAP-4-HELP

877-527-4435

213-765-1190

LAP@calbar.ca.gov

www.calbar.ca.gov/LAP



LAP location

865 South Figueroa Street, Los Angeles, CA 90017

(not in State Bar building, next door in TCW building)



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Ethics Hotline:



- Confidential research service for attorneys seeking guidance on their professional responsibilities
- Ethics Hotline at 1-800-238-4427, Monday-Friday, 9:00 a.m. to 4:30 p.m.
- [Ethics Hotline Research Assistance Request Form](#)
- <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Hotline>
- Staff members:
 - Cannot provide legal counsel, advice, or opinions
 - Can discuss issues and authorities
 - Can refer attorneys to statutes, rules, cases, and State Bar opinions
 - Can strive to assist attorneys in reaching informed decisions

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Resources



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- ABA Commission on Lawyer Assistance Programs (CoLAP), articles, podcasts: <https://abacolap.wordpress.com/author/abacolap/>
- The Other Bar: Recovery program for California law students, bar applicants, attorneys, and judges, <https://otherbar.org>; hotline: 800-222-0767
- Lawyer Depression Project: Free resource for attorneys, law students, paralegals, and administrative professionals
- Suicide Prevention Lifeline: 800-272-8255
- Employee Assistance Programs (EAP) with your employer
- Private insurance
- Your law firm/law school/bar organization

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LAP Survey

0 done

0 underway

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