

AMERICAN BAR ASSOCIATION

YOUNG LAWYERS DIVISION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association urges all legal employers to
2 adopt policies and practices that encourage all of their lawyers to unplug at least
3 one consecutive week per year without the need to reply to emails/calls or attend
4 virtual meetings by:
- 5 1) Allowing employees who are taking time away from the office to designate a
6 coworker to handle calls/emails/meetings; and
 - 7 2) Requesting that the designated coworker only reach out to the employee on
8 vacation, if there was an emergency; and
- 9
- 10 FURTHER RESOLVED, That the American Bar Association urges all private law
11 firms to provide 40 hours of billable hour credit for employees who take the one
12 week of unplug time.

REPORT

A. INTRODUCTION

Attorneys work long hours and often do not take time to truly unplug from work. This can negatively impact the attorney’s work product and well-being. The lack of time to unplug can lead to burnout, which has only intensified for many attorneys during the COVID-19 Pandemic. In addition, some attorneys and firms do not set client expectations about responding to non-urgent emails during nights and weekends. However, some legal employers are recognizing the importance for attorneys to have time away from email, phone calls, and Zoom meetings to truly “unplug.” One legal employer has adopted a policy to encourage its employees to unplug from work and this resolution encourages all employers to adopt similar policies.

B. UNPLUG TIME AND ATTORNEY WELL-BEING

The ABA’s National Task Force on Lawyer Well-Being (“Task Force”) has discussed work addiction and poor self-care among attorneys.¹ The Task Force stated in its report that “about a quarter of lawyers are workaholics, which is more than double that of the 10 percent rate estimated for U.S. adults generally.”² In addition, “[n]umerous health and relationship problems, including depression, anger, anxiety, sleep problems, weight gain, high blood pressure, low self-esteem, low life satisfaction, work burnout, and family conflict can develop from work addiction.”³ Furthermore, lawyers who do not have downtime to recover from the stress of practicing law have an increased risk of exhaustion.⁴ The Task Force recommended that legal employers should monitor employees for work addiction and should “expressly encourage lawyers to make time to care for themselves and attend to other personal obligations.”⁵ In other words, the Task Force recommended that lawyers take time away from work to “unplug.”

The Task Force noted many positive attributes associated with taking time away from work. Specifically, employees “who feel recovered report greater work engagement, job performance, willingness to help others at work, and ability to handle job demands . . . and the quality of employees’ recovery influences their mood, motivation, and job performance.”⁶

¹ National Task Force on Lawyer Well-Being: Creating A Movement to Improve Well-Being in The Legal Profession (August 14, 2017), *available at* https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/lawyer_well_being_report_final.pdf.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ National Task Force on Lawyer Well-Being, *supra*, note 1.

⁶ *Id.*

Finally, the Task Force noted the importance of an employer having clear vacation policies and an organizational culture that encourages employees to use their vacation time to unplug from work. In fact, in a study of 6,000 lawyers, “the number of vacation days taken was the strongest predictor of well-being among all activities measured in the study.”⁷ As a result, legal employers should encourage their attorneys to take time away from the office to unplug.

In another study of 3,800 lawyers by *American Lawyer Magazine*, “[o]nly 36% of respondents said they use all their vacation time. The others, [when] asked why they do not, most commonly answered that they ‘can’t disconnect’ and that ‘client demands’ keep them from doing so, or that they ‘don’t want to have work pile up.’ Even when they do take vacation, 72.5% said they cannot disconnect from work during that time.”⁸ This is further evidence that legal employers need to encourage attorneys to take time away to disconnect by having a co-worker cover their work while they are taking much needed time to unplug from client demands.

Finally, law firms should not just encourage lawyers to take time to unplug, but they should give the attorneys billable hour credit for doing so. Otherwise, some attorneys might not take the time because of concerns about meeting their billable hour requirements. “[L]aw firms’ recent attempts to encourage lawyers to take additional time off as a way to take care of their mental health are unlikely to have the intended effect without an attendant reduction in billable hour requirements. The fear of falling short on billables is not allayed by working *less*.”⁹ Practically, if law firms just encourage attorneys to take time to unplug without also addressing billable hour requirements, attorneys must either plan to otherwise make up the billable hours or plan to continue working instead of unplugging (to stay on track with their billable hour requirements).

It is not easy to get lawyers to take time away from work in part because of “the fear that taking time off would put an attorney behind on work, or the impression it would make on partners or other senior attorneys.”¹⁰ A wellness consultant stated “[y]ou can give people thousands of vacation hours a year. But if you don’t want to decrease billable hours, then nobody will take it.”¹¹ Finally, the consultant noted that many law firms have “rolled out programs offering billable

⁷ *Id.*

⁸ Practical Tools: Managing Time and Maintaining Resilience available at <https://cinchcast-ams-prod-handouts.s3.amazonaws.com/a1e8647a-18a6-475a-beac-5fd9254f5656/YL2106WBEW1%20Course%20Materials.pdf>.

⁹ Billable Hours are Smothering Associates and any Attempts to Help Them (May 4, 2021) available at <https://www.law.com/2021/05/04/law-com-trendspotter-billable-hours-are-smothering-associates-and-any-attempts-to-help-them/>.

¹⁰ *Id.*

¹¹ *Id.*

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hour credit for participating in diversity programs and events . . . so why not do the same for mental health and offer five hours a month to be used for a mental health credit.”¹²

C. IMPLEMENTING AN UNPLUG TIME POLICY

The law firm Orrick Herrington & Sutcliffe adopted a policy in 2021 that allows employees to receive 40 hours of billable credit for their one week of vacation time.¹³ The policy, which is designed to avoid burnout, applies to every employee and is strongly encouraged.¹⁴ Attorneys who are taking time away can designate a co-worker to handle calls/emails and would only reach out to the attorney, if there was an emergency.¹⁵

The firm, in its announcement, noted that “[p]erforming at the highest level is sustainable only if you also take the time to recover,—that’s true of top performance across all disciplines.”¹⁶ In addition, the firm said “to encourage you [to] take this seriously, timekeepers may record up to 40 hours of Unplug Time and we will apply it to your bonus eligibility.”¹⁷ As previously discussed, providing billable hour credit is important because many attorneys may not otherwise take the time to unplug.

Finally, it may be a long time before American lawyers follow the lead of French workers who are allowed by law to “ignore work-related emails after hours,” or even to a recent trend in which companies and entire teams are taking vacations during the same week, which allows employees to truly unplug.¹⁸ However, more legal employers can start by adopting an unplug policy which provides physical and mental health benefits to its employees “and by extension, their employers.”¹⁹

¹² *Id.*

¹³ Orrick hopes to battle burnout with 'unplug time' policy (March 22, 2021) *available at* <https://www.abajournal.com/news/article/orrick-hopes-to-battle-burnout-with-unplug-time-policy>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Top 50 Biglaw Firm Rolls Out Incredible Bonus-Eligible Time-Off Policy (March 18, 2021) *available at* <https://abovethelaw.com/2021/03/top-50-biglaw-firm-rolls-out-incredible-bonus-eligible-time-off-policy/2/>.

¹⁷ *Id.*

¹⁸ Orrick unplugged: Firm mandates all employees to take 40 hours of tech-free leave (March 18, 2021), *available at* [https://today.westlaw.com/Document/I6b0b21c087c911ebbf3d04651a63703/View/FullText.html?contextData=\(sc.Default\)&transitionType=Default&firstPage=true](https://today.westlaw.com/Document/I6b0b21c087c911ebbf3d04651a63703/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true); Company-wide vacations could be the future of paid time off (July 2, 2021) *available at* https://www.axios.com/burnout-same-vacation-paid-time-off-f9c0b10b-6c95-4f67-863a-fbdb799beee4.html?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosam&stream=top.

¹⁹ Orrick unplugged, *supra* note 6.

Respectfully submitted,

Tamara Nash, Chair
Young Lawyers Division

August 2024

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GENERAL INFORMATION FORM

Submitting Entity: Young Lawyer Division

Submitted By: Tamara Nash, Chair

1. Summary of the Resolution(s).

This Resolution is designed to avoid burnout. The Resolution encourages legal employers to adopt policies that allow its employees to unplug at least one week per year without having the need to reply to emails or calls. Attorneys who are taking time away would designate a co-worker to handle calls/emails and would only reach out to the attorney, if there was an emergency.

2. Indicate which of the ABA's Four goals the resolution seeks to advance (1-Serve our Members; 2-Improve our Profession; 3-Eliminate Bias and Enhance Diversity; 4-Advance the Rule of Law) and provide an explanation on how it accomplishes this.

Goal I. This Resolution seeks to serve ABA members in that many ABA members could benefit if their legal employers adopted an unplug policy.

Goal II. This Resolution seeks to improve the profession because lawyers who utilize an unplug time policy will likely be happier, healthier, and better able to serve their clients.

3. Approval by Submitting Entity.

Approved by the ABA YLD Assembly in August 2021.

4. Has this or a similar resolution been submitted to the House or Board previously?

No.

5. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

None.

6. If this is a late report, what urgency exists which requires action at this meeting of the House?

Not applicable.

7. Status of Legislation. (If applicable)

None.

8. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

If this Resolution is approved by the House of Delegates, it will become ABA policy to encourage legal employers to adopt policies that allow all employees to unplug at least one week per year without having the need to reply to emails or calls. Then, the ABA President and the ABA generally can specifically advocate for this.

9. Cost to the Association. (Both direct and indirect costs)

None.

10. Disclosure of Interest. (If applicable)

None.

11. Referrals.

Law Practice Division
Section of Litigation
Section of Family Law
Section of Labor and Employment Law
Law Student Division
Business Law Section
Section of Real Property, Trust and Estate Law
Standing Committee on Ethics and Professional Responsibility
Commission on Lawyer Assistance Programs
Solo, Small Firm and General Practice Division
Government and Public Sector Lawyers Division
Commission on Women in the Profession
Section of Tort Trial and Insurance Practice
Senior Lawyers Division
Section of Taxation

12. Name and Contact Information (Prior to the Meeting. Please include name, telephone number and e-mail address). *Be aware that this information will be available to anyone who views the House of Delegates agenda online.)*

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13. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

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EXECUTIVE SUMMARY1. Summary of the Resolution.

This Resolution is designed to avoid burnout. The Resolution would encourage legal employers to adopt policies that allow all of their lawyers to unplug at least one week per year without having the need to reply to emails or calls. Attorneys who are taking time away would designate a co-worker to handle calls/emails and would only reach out to the attorney if there was an emergency.

2. Summary of the issue that the resolution addresses.

The Resolution addresses the need for legal employers to adopt policies that allow and encourage employees to unplug from work at least one week per year.

3. Please explain how the proposed policy position will address the issue.

The proposed policy encourages legal employers to implement clear written policies for employees to unplug from work. In addition, law firms should provide 40 hours of billable hour credit for employees who take one week of unplug time.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None.