

ABA MEMORANDUM

To: Law School Deans & Career Services Directors

From: Kirsten Winek, Manager, Law School Analytics and Reporting
Bill Adams, Deputy Managing Director

Date: October 22, 2018

Re: ABA Employment Protocols for the Class of 2018

Dear Deans & Career Services Directors:

The Employment Protocols included with this memorandum are in effect for the Class of 2018.

On September 14, 2018, the ABA Council of the Section of Legal Education and Admissions to the Bar approved the new ABA Guidance Document: Employment Protocols. This guidance document governs two phases of law school J.D. graduate employment outcomes reporting: (1) the Data Protocol for Collecting, Maintaining, and Reporting Law Graduate Employment Data and (2) the Review Protocol for Reviewing Law Graduate Employment Data. Collectively, this guidance document is referred to as the Employment Protocols.

The Employment Protocols are the controlling authority for the collection, maintenance, reporting, and review of graduate employment outcome data for law schools regulated by the ABA.

Prior to this time, the guidance to law schools existed in numerous sources such as guidelines, documents, FAQs, and webinars. The ABA invited NALP to convene an advisory group to assist in a comprehensive review and consolidation of these resources. These Employment Protocols were prepared in collaboration with the ABA/NALP Graduate Employment Outcomes Advisory Group.

The Employment Protocols will assist the law school community by enhancing clarity, accuracy, and consistency in reporting results in all outcome categories. This clear and consistent picture of the employment outcomes of law school graduates will benefit the general public, and in particular, will aid law school applicants in their decision-making process.

This memorandum provides a summary of some of the changes in the Employment Protocols.

What are the structural changes to the Employment Protocols?

First, the Employment Protocols adopt a code structure similar to the rules of civil procedure, allowing law schools and the ABA to cite with precision when communicating and responding to questions.

Second, the Employment Protocols consolidate examples and advice previously found in various webinars, FAQs, and other ABA communications, integrating them with the Employment Protocols. This consolidation resolves inconsistencies and eliminates redundancies.

Finally, the Employment Protocols are comprehensive. As the controlling authority on employment data collection, reporting, and reviews, they are the primary resource a law school needs to comply with ABA employment reporting obligations.

What changed?

These Employment Protocols include some important changes that we think address concerns expressed by the schools, including significant changes in the Review Process that we think will improve it and be welcomed by Career Service Professionals.

Review process

The biggest change in the Employment Protocols is the new Review Protocol (see Review Protocol 101-105). In the new Review Protocol, the Random School Review has been eliminated and the Random Graduate Review has been expanded. All law schools will now be subject to the Random Graduate Review each year (see Review Protocol 103). Law schools with a graduating class of fewer than 230 students will have 10 graduate employment files selected for Random Graduate Review; law schools with a graduating class of 230 or more students will have 20 graduate employment files selected for Random Graduate Review (see Review Protocol 103). Law schools must meet a compliance rate of 90% in the Random Graduate Review; otherwise, they will be subject to Elevated Reviews (see Review Protocol 104).

Canadian articling positions are long-term positions

Data Protocol 301(a)(5) explicitly includes Canadian articling positions within the definition of long-term, regardless of the actual length of the position.

Presumptions for employment status

The new Employment Protocols codify several presumptions that schools may rely upon when classifying the employment status of their graduates. When a graduate's employment falls within one of the permitted presumptions, no additional documentation is required to be included in the graduate employment file.

The presumptions for employment status can be found in the following places in the Employment Protocols:

- Data Protocol 202(b): Employed – Bar Passage Required
- Data Protocol 203(b): Employed – JD Advantage
- Data Protocol 204(b): Employed – Professional Position
- Data Protocol 205(b): Employed – Non-Professional Position
- Data Protocol 209(b): Unemployed – Seeking
- Data Protocol 210(b): Unemployed – Not Seeking
- Data Protocol 301(b): Long-term vs Short-term
- Data Protocol 302(b): Full-time vs Part-time

- Appendix E: Presumptions for Employment Status

These presumptions are intended to ease the data collection and documentation burden on schools. They are not intended to limit how a school may report a graduate's employment status. A school may classify a graduate differently when sufficient supporting documentation (see Data Protocol 103) is included in the graduate employment file to substantiate the reported category.

June 30 deadline for changes to reported data

Previously, the obligation to amend and correct reported employment data was open-ended. This created uncertainty and a significant burden on law schools. The new Employment Protocols specify that the obligation to update or correct employment data lasts until June 30 of the reporting year. No further changes will be allowed after that time unless otherwise directed by the ABA. See Example 2 to Data Protocol 102.

Start date deferred

Data Protocol 208 re-named the prior Unemployed – Start Date Deferred category to Employed – Start Date Deferred. This is a name change; the definition of the category itself has not changed. It was discussed that the ABA may require all key items to be documented and reported for this category. You will see in Data Protocol 208(a)(3) that the only documentation required for this category is the graduate's start date.

Appendices

For ease of reference and access, this guidance document includes Appendices that incorporate other important documents related to graduate employment data collection and reporting. The Appendices are:

- Appendix A: The Key Items of Employment Information for the Graduate Employment Files and The Graduate Employment Information Needed to Complete the Employment Questionnaire (EQ)
- Appendix B: The Employment Questionnaire
- Appendix C: Generally Reliable Sources of Information
- Appendix D: Dean's Signature Page
- Appendix E: Presumptions for Employment Status

What's been clarified?

These Employment Protocols strive to provide more clarity in definitions of various terms and classifications. Three notable clarifications include:

Judicial Clerkships

While judicial clerkships are, by definition under Data Protocol 202, Bar Passage Required, they may not be presumed to be full-time and/or long-term. Answering the question of whether a judicial clerkship is full-time and/or long-term is found in Data Protocols 301 and 302. These Protocols specify that a school must provide supporting documentation for the long-term vs

short-term and full-time vs part-time categories if this is not provided by the graduate. See also Example 3 to Protocol 301.

Definition of Unemployed – Not Seeking

Data Protocol 210(a) clarifies the definition of Unemployed – Not Seeking to make clear that, to be classified as not seeking, a graduate must be unemployed, not seeking employment, and would not accept an offer of employment. In other words, a graduate must have completely removed themselves from the market to be classified as Not Seeking.

Reminder about employer point of view

Schools often expressed confusion about how to interpret conflicting opinions about categories, particularly in regards to the JD Advantage category and the long-term/short-term category. The Employment Protocols clarify that, when selecting the proper classification for a graduate, it is the *employer's* intention or point of view that must be considered. See, for example, Data Protocol 203(a)(1)(iii) and Data Protocol 301(a)(1).

If you have additional questions

Schools may continue to have questions about the Employment Protocols or about how to classify graduates. To help track areas of concern and uncertainty, schools should initially present their questions or concerns related to these Employment Protocols or specific graduate classification questions via email to Kirsten Winek (kirsten.winek@americanbar.org).

For technical questions relating to the uploading of the Employment Questionnaire or making changes to what was reported in the Employment Questionnaire, please contact Ken Williams (Kenneth.williams@americanbar.org) or Andrew Crane (Andrew.crane@americanbar.org).

Future updates & revisions

Each year, the ABA will conduct a thoughtful review of changes that may be incorporated into the Employment Protocols. The ABA will communicate to schools when it will accept suggestions for changes to the Employment Protocols each year.

Important Dates for the Class of 2018 Employment Data Collection

Graduate Employment Status Date: **Friday, March 15, 2019**

Graduate Data Reporting Deadline/Employment Questionnaire Deadline: **Friday, April 5, 2019 at 5 pm Central Time.**

A schedule for the Random Graduate Reviews will be sent in early 2019.