

## MEMORANDUM

To: Maureen O'Rourke and Greg Murphy  
From: Scott Norberg  
Cc: Barry Currier and Bill Adams  
Date: July 25, 2017  
RE: Changes to ABA Employment Reporting

As discussed briefly with Maureen at the SRC meeting in Chicago, here is a short memo outlining the issues and complications raised by the Council decision in June to revise the ABA Employment Summary Report form and to change the employment reporting rules for law school funded (LSF) positions per Paul Mahoney's proposal dated May 30, 2017. The Mahoney proposal essentially undoes the reforms in the reporting of LSF positions that the Council approved nearly unanimously two years ago after extensive vetting by the DPCC Committee and the Council, and two rounds of public notice and comment. It decreases or eliminates the transparency of schools' LSF employment outcomes, which, unlike any other employment outcomes, are not generated by the market. It also raises a number of questions about changes to be made to the Employment Questionnaire (EQ), the EQ Definitions and Instructions, and the protocol and related FAQs governing the auditing of law school employment reports. The Council's decision is likely to have significant consequences for law school career services professionals, and for law school policies and rankings, but was made without any of the transparency or procedures that have accompanied such decisions in the past. A major beneficiary will be the school of the party who made the proposal. For all these reasons, I urge that the matter be sent to the SRC for some further work.

### A. Changes to the EQ, Definitions and Instructions, Protocol, and FAQ's Necessary to Implement Council Decision

For easy reference, I have attached the EQ, EQ Definitions and Instructions, current ABA Employment Summary Report, as well as the Mahoney proposal.

#### 1. Changes to the EQ Definitions and Instructions

The Mahoney proposal will require numerous changes in the EQ Definitions and Instructions. Most significantly, although far from explicit, it appears that the instruction regarding the reporting of LSF positions must be amended to replace the exclusion for long-term jobs that are open to graduates of any law school with a much broader exclusion for long-term jobs that pay at least \$40,000 regardless of whether they are available only to graduates of the law school. The intent to make this major change is implied the provision to allow schools to report LSF positions only in the below-the-line government or public interest categories, and not in the LSF line. It is this change that would allow non-market generated positions to be reported within other categories that are commonly understood to be market-generated positions, and thus make them fully non-transparent. The Mahoney proposal seems to create a new category – Employed by school – which would need a completely new definition given that it now would include only some of the positions that have been reported as LSF positions before now.

In addition, the definition of long-term must be amended to delete the sentence stating that to be long-term, a LSF position must pay at least \$40,000; and the EQ instructions regarding Employment Status Questions 1, 2, 3, and 4 must be revised to delete the exclusion of LSF positions, since they are

being moved back below the line. Further, the combination of many of the existing categories into new categories will require many revisions to the Definitions and Instructions.

All of these changes should be made with careful attention to their impact on other provisions in the Definitions and Instructions, to their possible impact on the behavior of schools, and to the reasons for the current categories. The implied changes to the EQ Definitions and Instructions provision that excludes certain LSF positions from the definition of LSF provision needs especially careful vetting.

## 2. Changes to the Employment Summary Report and Possible Changes to the EQ

The Mahoney proposal would change the Employment Summary Report to combine: (1) the FT/ST, PT/LT, and PT/ST classifications into a catch-all "Other," so that there are only two categories, FT/LT and Other; (2) the Employed – Professional, Employed – Non-Professional, and Employed – Undeterminable categories into a single "Employed – Other" category; (3) Unemployed – Start Date Deferred, Unemployed Not Seeking, Unemployed Seeking, and Employment Status Unknown into a single category, "Unemployed or status unknown;" (4) law firms sizes of 11-25, 26-50, and 51-100 into a single grouping of "11-100;" and (5) law firm sizes of 101-250 and 251-500 into a combined grouping of "101-500;" and (6) Clerkships – State & Local, and Clerkships – Other into a single category, "Clerkships – State, local & other." The proposal also would eliminate the Total Graduates line at the bottom of the Employment Status box, and the Total line at the bottom of the Employment Type box.

These changes to the Employment Summary Report are quite sweeping. I personally think that most of them have real merit. However, it would be a mistake not to get input from NALP, career services professionals, deans, and others in order to be sure that the changes do not have unintended consequences. The ABA adopted most of the existing categories from NALP when it took over employment data reporting from NALP in 2010. (Before that, schools reported their data to NALP, and gave the ABA their NALP summaries.) NALP's categories were determined largely by law school career services officers, and it could be important to know their reasons for them. Most have been around for a very long time.

I understand that the Council approved the EQ right before it considered the Mahoney proposal. It appears, then, that in approving the Mahoney proposal, the Council may not have intended to change the EQ. However, if the EQ is not changed, schools will be reporting a good bit of information through the EQ that will not appear in the Employment Summary Reports. One of the rationales for the Mahoney proposal was that it would "decrease the substantial burden we have put on career services offices." (Mahoney memo, p. 4.) This benefit obviously is not realized without changing the EQ to combine the above categories, and perhaps is not desired by the beneficiaries if the categories were largely of their design.

The changes in the Employment Summary Report can be made without changing the EQ. The same information can continue to be collected in the EQ this year, but then fed into schools' 2017 Employment Summary Reports so as to report only the more condensed categories per the Mahoney proposal. If this is done, the more granular data would still be part of the master spreadsheet that includes all of the data reported by schools. This spreadsheet is available on the ABA's website together with the Employment Summary Reports. Arguably, though, the Mahoney proposal meant to delete the more granular data from the master spreadsheet as well as from the Employment Summary Reports, but this must be implied (after inferring that the Mahoney proposal did not affect the EQ).

### 3. Changes to Protocol and Related FAQs

The Mahoney proposal will require numerous conforming changes to the Protocol and related FAQs, primarily concerning the elimination of the separate categories for FT/ST, PT/LT, and PT/ST positions, and to the other category consolidations described above. The Protocol is a Council-approved document.

#### B. The Changes Will Rattle Law School Career Services Offices

As Bill Adams suggested at the SRC meeting, the mid-cycle changes in the EQ Definitions and Instructions, and to the protocol and related FAQs, will aggravate law school career services offices. In the past, changes have been put out for notice and comment, and adopted in advance of the beginning of the reporting cycle and in time to present them to Career Services officers at the NALP annual meeting in April. Likewise, the protocol was approved by the Council after very extensive notice and comment. The changes approved by the Council in June, with all of the implementing changes that will have to be made to the EQ Definitions and Instructions, and to the Protocol and FAQs, could at best be finalized sometime this fall. The mid-course changes will create the appearance of a lack of planning and organization, particularly where the original changes were the product of such extensive notice and comment from many schools. Further, schools that would respond to the changes by increasing their number of LSF positions that can be hidden from public view may feel disadvantaged. Many schools cut back on their FT, LT LSF positions after the 2014 reforms, and might now re-enter the fray. The graduate employment market continues to be very challenging, with a net reduction of nearly 3,000 FT, LT BPR jobs obtained by law school graduates within ten months of graduation over the past three years.

#### C. The Optics of the Mahoney Proposal

The Mahoney proposal urged a great many changes at once. Some of them were matters of simplification that likely have low stakes. At least one of them was a matter of substance that has important stakes. The proposal would cause jobs paid for by law schools, so long as the salary is at least \$40,000, to not be identified at all publically. These LSF jobs will look to the world like jobs provided by the market with no way for anyone to tell that they weren't. This is a dramatic reversal of policy. At prior times when this issue has been addressed, notice has been given and comment has been invited, it has received study by a committee, and it has been presented to the Council with a chance for both sides to be heard.

The difficulties are a little more severe than even this summary suggests. The proposal the Council approved may well have significant consequences for law school rankings. The Mahoney proposal most benefits a small group of schools that employ relatively large numbers of recent graduates in LSF positions that, unlike Skadden and similar fellowships, are available only to graduates of their own schools, including several schools with faculty members on the Council. For example, at UVA, if the school employs the same proportion of graduates in FT, LT BPR LSF jobs in 2018 as it did this year, and those jobs pay \$40,000, the school's FT, LT BPR rate would be improved by 5.8% without any indication that that percentage of jobs is not generated by the market.

This matter of appearance is not a minor concern. An important policy change that decreases employment transparency, itself made with minimal procedure and in a non-transparent manner, and that benefits the party advocating it – even if all this was motivated by the purest intentions (which I fully assume, but others may not), it seems likely to attract adverse attention to the ABA and the

Council. This is particularly the case when the Council may not have recognized that the Mahoney memo would require extensive changes to the EQ it approved at the same time. In any event, the problems could be mitigated if the proposal were sent to the SRC for consideration of how it might be implemented. The committee could look at the somewhat complex issues described above that involve the Definitions and Instructions. The committee could be invited to comment on whether any aspects of the proposal call for any further procedure. This would slow down the implementation a bit, which would be appropriate for the reasons recounted here. And it would create a chance for further thought about how to approach these issues in a way that is procedurally responsible.

May 30, 2017

MEMORANDUM

To: Members of the Council  
From: Paul Mahoney  
Re: Employment Summary Report

In the past several years, the Council has made numerous changes to the way law schools report graduates' employment outcomes. Based on various third-party information and ranking services' recent use of our raw employment data, it is clear that our data are both excessively complex and confusing. I think it is essential that we revise the Employment Summary Report without delay.

*Complexity*

The Employment Summary Report currently contains 158 individual cells. The proliferation of categories responded to criticisms by organizations like Law School Transparency and academics like Paul Campos, who argued that broad categorizations of "employed" versus "unemployed" masked important differences in job quality. We accordingly require schools to categorize jobs across multiple dimensions, including whether a job is part-time or full-time, long-term or short-term, JD-required or not, and so on.

Inspection of individual schools' Employment Summary Reports and aggregate data taken from them demonstrates conclusively that we went overboard. In aggregate, 62% of all entries are zeroes for the Employment Summary Reports for the class of 2016, while only 17 cells, on average, contain entries that amount to more than 5% of employment outcomes. This would be tolerable if the reports' granularity enabled students to identify schools that are having trouble placing their graduates, but that is not the case. Even the three schools—Ave Maria, Charlotte, and Valparaiso—that have recently been the subject of adverse action by the Council show zeroes in 57% of the cells in aggregate.

Third parties generally rely on a handful of the entries and treat the remainder as uninformative. The National Law Journal ranks schools based on the percentage of "gold standard" jobs, meaning long-term, full-time, bar passage-required jobs not funded by the school. Others focus on "elite" jobs, meaning the sum of large law firm employment and federal clerkships. *US News* gives full weight to long-term, full-time jobs for which bar passage is required or for which it provides an advantage and that are not school-funded. More specialized rankings help prospective students identify schools that send significant numbers to public interest employment or to particular geographic markets. But all of them combined use only a modest fraction of the information in the reports.

The Employment Summary Report could be simplified and shortened substantially without loss of value. To take a simple example, fewer than 10% of all 2016 graduates in aggregate are assigned to either the "long-term, part-time," "short-term, full-time," and "short-

**Correction: The Top 50 Law Schools and Bar Passage Required & J.D.**  
Advantage charts have been changed to correct a miscalculation that incorrectly lowered the rankings of schools with students in school-funded positions.

Of course, the revised version was not supported by the same email blitz and press release that accompanied the original. Moreover, several other prominent law-related web sites had already reprinted the ranking. Many readers may never have learned of the error.

At least one law-related blog made the same mistake independently. The site [lawschooltuitionbubble.com](http://lawschooltuitionbubble.com) posted commentary on and a ranking of employment outcomes. After a few days, it posted the following:

I made a few unfortunately significant errors when I compiled the data and created the table for full-time, long-term, bar-passage-required outcomes by law school in my first post on this topic. I overlooked the fact that the ABA now separates school-funded jobs in its employment status breakdown, meaning I subtracted school-funded jobs needlessly.

The ABA Council is of course not concerned with the relative ranking of individual schools on web sites. But we should be concerned, and deeply, about the fact that our too-clever-by-half treatment of school-funded jobs was a proximate cause of these mistakes. Needless to say, if organizations like the *NLJ* were misled by the Employment Summary Reports, we must assume that most prospective students who looked at these reports without the mediation of a ranking service were misled as well. This will have real and deleterious effects as successful applicants select law schools based on misunderstandings.

In short, we applied a cure that is more misleading than the original disease. Recall that we began down this path because a number of commentators were concerned that some law schools were actively deceiving prospective students by hiring unemployed graduates to perform menial tasks and counting them as employed. But over time our concern has become an obsession. School-funded positions accounted for 2% of reported employment outcomes for the class of 2016, but we devote 19% of the entries in the Employment Summary Report to those positions.

We can provide more easily understood, accurate information and reduce the information overload simultaneously through two simple fixes. First, we should again include school-funded positions in the “above the line” totals where they would be expected, based on their actual duration, bar passage requirements, and so forth. Second, in the “below the line” totals, we should include fellowships with an annual salary above \$40,000, which we have already recognized as comparable to Skadden/EJW fellowships, in the totals for government or public interest, as appropriate, and only in those totals. All other school-funded positions should go into their own category, “Employed by school,” which need take up only one row in the form. It makes far more sense to treat salary as relevant to the *type* of employment than to the *duration* of employment.

EMPLOYMENT STATUS	FULL TIME LONG TERM	OTHER	NUMBER
Employed-bar passage required			
Employed-JD advantage			
Employed-Other			
Pursuing Graduate Degree Full Time			
Unemployed or status unknown			
EMPLOYMENT TYPE	FULL TIME LONG TERM	OTHER	NUMBER
Law Firms			
Solo			
2-10			
10-100			
100-500			
501 +			
Clerkships-Federal			
Clerkships-State, local & other			
Business & Industry			
Government			
Public Interest			
Education			
Employed by school			
Employer Type Unknown			
EMPLOYMENT LOCATION	STATE		NUMBER
State-Largest Employment			
State-2 <sup>nd</sup> Largest Employment			
State-3 <sup>rd</sup> Largest Employment			

*New or Revised Definitions*

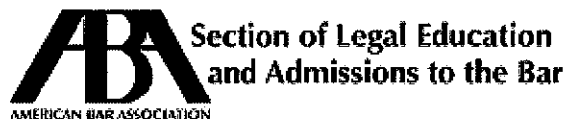
**Government/Public Interest.** A graduate may be included in this category if the law school or an affiliated entity pays all or part of the graduate's salary, but only if the graduate is paid at least \$40,000 per year. All other school-funded positions must be included in "Employed by school"

**Long-term.** A long-term position is one that the employer expects to last at least one year.

*Eliminated Definitions*

**Part-time**

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### EMPLOYMENT SUMMARY FOR 2016 GRADUATES

EMPLOYMENT STATUS	FULL TIME LONG TERM	FULL TIME SHORT TERM	PART TIME LONG TERM	PART TIME SHORT TERM	NUMBER
Employed - Bar Passage Required	110	0	0	0	110
Employed - J.D. Advantage	16	1	3	0	20
Employed - Professional Position	0	0	0	1	1
Employed - Non-Professional Position	0	0	1	0	1
Employed - Law School/University Funded	0	0	0	1	1
Employed - Undeterminable	0	0	0	0	0
Pursuing Graduate Degree Full Time					1
Unemployed - Start Date Deferred					0
Unemployed - Not Seeking					3
Unemployed - Seeking					8
Employment Status Unknown					0
Total Graduates					145

EMPLOYMENT TYPE	FULL TIME LONG TERM	FULL TIME SHORT TERM	PART TIME LONG TERM	PART TIME SHORT TERM	NUMBER
Law Firms					
Solo	4	0	0	0	4
2 - 10	26	0	1	0	27
11 - 25	8	0	0	0	8
26 - 50	7	0	0	0	7
51 - 100	7	0	0	0	7
101 - 250	7	0	0	0	7
251 - 500	5	0	0	0	5
501 +	7	0	0	0	7
Unknown Size	0	0	0	0	0
Business & Industry	10	0	3	1	14
Government	18	1	0	0	19
Pub. Int.	3	0	0	0	3
Clerkships - Federal	15	0	0	0	15
Clerkships - State & Local	6	0	0	0	6
Clerkships - Other	0	0	0	0	0
Education	3	0	0	1	4
Employer Type Unknown	0	0	0	0	0
Total	126	1	4	2	133

LAW SCHOOL/UNIVERSITY FUNDED POSITIONS	FULL TIME LONG TERM	FULL TIME SHORT TERM	PART TIME LONG TERM	PART TIME SHORT TERM	NUMBER
Employed - Bar Passage Required	0	0	0	0	0
Employed - J.D. Advantage	0	0	0	1	1
Employed - Professional Position	0	0	0	0	0
Employed - Non-Professional Position	0	0	0	0	0
Total Employed by Law School/University	0	0	0	1	1

EMPLOYMENT LOCATION	STATE	NUMBER
State - Largest Employment	Alabama	66
State - 2nd Largest Employment	Georgia	10
State - 3rd Largest Employment	Texas	9
Employed in Foreign Countries		1



- **Employed – Bar Passage Required.** A position in this category requires the graduate to pass a bar exam and to be licensed to practice law in one or more jurisdictions. The positions that have such a requirement are varied and include, for example, positions in law firms, business, or government. However, not all positions in law firms, business, or government require bar passage; for example, a paralegal position would not. Positions that require the graduate to pass a bar exam and be licensed after beginning employment in order to retain the position are included in this category. Judicial clerkships are also included in this category.
  
- **Employed – J.D. Advantage.** A position in this category is one for which the employer sought an individual with a J.D., and perhaps even required a J.D., or for which the J.D. provided a demonstrable advantage in obtaining or performing the job, but which does not itself require bar passage or an active law license or involve practicing law. Examples of positions for which a J.D. is an advantage include a corporate contracts administrator, alternative dispute resolution specialist, government regulatory analyst, FBI agent, and accountant. Also included might be jobs in personnel or human resources, jobs with investment banks, jobs with consulting firms, jobs doing compliance work in business and industry, jobs in law firm professional development, and jobs in law school career services offices, admissions offices, or other law school administrative offices. Doctors or nurses who plan to work in a litigation, insurance, or risk management setting, or as expert witnesses, would fall into this category, as would journalists and teachers (in a higher education setting) of law and law related topics. It is an indicator that a position does not fall into this category if a J.D. is uncommon among persons holding such a position.
  
- **Employed – Professional Position.** A position in this category is one that requires professional skills or training but for which a J.D. is neither required nor a demonstrable advantage. Examples of persons in this category include a math or science teacher, business manager, or performing arts specialist. Other examples include professions such as doctors, nurses, engineers, or architects, if a J.D. was not demonstrably advantageous in obtaining the position or in performing the duties of the position.
  
- **Employed – Non-Professional Position.** A position in this category is one that does not require any special professional skills or training.
  
- **Short-term.** A short-term position is one that has a definite term of less than one year. Thus, a clerkship that has a definite term of one year or more is not a short-term position. It also includes a position that is of an indefinite length if that position is not reasonably expected to last for one year or more.  
  
A position that is envisioned by the graduate and the employer to extend for one year or more is not a short-term position even though it is conditioned on bar passage and licensure. Thus, a long-term position that is conditioned on passing the bar exam by a certain date does not become a short-term position because of the condition.
  
- **Long-term.** A long-term position is one that the employer expects to last one year or more. A law school/university funded position that the law school expects to last one year or more may be considered long-term for purposes of this definition only if the graduate is paid at least \$40,000 per year. The possibility that a short-term position may evolve into a long-term position does not make the position a long-term position.
  
- **Full-time.** A full-time position is one in which the graduate works a minimum of 35 hours per week. A full-time position may be either short-term or long-term.
  
- **Part-time.** A part-time position is one in which the graduate works less than 35 hours per week. A part-time position may be either short-term or long-term.

**Submitted On** 4/6/2017 9:33:55 AM

**Last Updated** 4/6/2017 9:26:13 AM

2017 Employment Questionnaire (For 2016 Graduates)

Data Entry Instructions for Profile Questions

**Employment Status**

- 1) Is this graduate employed – bar passage required?  
If no, go to question 2.  
If yes, check box; supply information re: Long/Short Term & Full/Part Time; go to question 1, Law School/University Funded Position; questions 2-10 will be grayed-out.
- 2) Is this graduate employed – J.D. Advantage?  
If no, go to question 3.  
If yes, check box; supply information re: Long/Short Term & Full/Part Time; go to question 1, Law School/University Funded Position; questions 1 & 3-10 will be grayed-out.
- 3) Is this graduate employed – Professional Position?  
If no, go to question 4.  
If yes, check box; supply information re: Long/Short Term & Full/Part Time; go to question 1, Law School/University Funded Position; questions 1-2 & 4-10 will be grayed-out.
- 4) Is this graduate employed – Non-Professional?  
If no, go to question 5.  
If yes, check box; supply information re: Long/Short Term & Full/Part Time; go to question 1, Law School/University Funded Position; questions 1-3 & 5-10 will be grayed-out.
- 5) Is this graduate employed – job category undeterminable?  
If no, go to question 6.  
If yes, check box; supply information re: Long/Short Term & Full/Part Time; go to question 1, Law School/University Funded Position; questions 1-4 & 6-10 will be grayed-out.
- 6) Is this graduate pursuing a graduate degree full time?  
If no, go to question 7.  
If yes, check box; Go to End; remaining questions will be grayed-out.
- 7) Is this graduate unemployed start date deferred?  
If no, go to question 8.  
If yes, check box; Go to End; remaining questions will be grayed-out.

- 8) Is this graduate unemployed – not seeking?  
If no, go to question 9.  
If yes, check box; Go to End; remaining questions will be grayed-out.
- 9) Is this graduate unemployed - seeking?  
If no, go to question 10.  
If yes, check box; Go to End; remaining questions will be grayed-out.
- 10) Is this graduate's employment status unknown?  
If yes, check box; remaining questions will be grayed-out; Go to End

### **Law School/University Funded Position**

- 1) Is this graduate employed in a Law School or University funded position?  
If no, check box; go to question 1 in Employment Type.  
If yes, check box; supply information re: Long/Short Term & Full/Part Time; go to question 1 in Employment Type.

### **Employment Type**

- 1) Is this graduate employed in a law firm - solo?  
If no, go to question 2.  
If yes, check box; go to question 1 in Employment Location; questions 2-17 will be grayed-out.
- 2) Is this graduate employed in a law firm – 2-10?  
If no, go to question 3.  
If yes, check box; go to question 1 in Employment Location; questions 1 & 3-17 will be grayed-out.
- 3) Is this graduate employed in a law firm – 11-25?  
If no, go to question 4.  
If yes, check box; go to question 1 in Employment Location; questions 1, 2 & 4-17 will be grayed-out.
- 4) Is this graduate employed in a law firm – 26-50?  
If no, go to question 5.  
If yes, check box; go to question 1 in Employment Location; questions 1-3 & 5-17 will be grayed-out.
- 5) Is this graduate employed in a law firm – 51-100?  
If no, go to question 6.  
If yes, check box; go to question 1 in Employment Location; questions 1-4 & 6-17 will be grayed-out.

- 6) Is this graduate employed in a law firm – 101-250?  
If no, go to question 7.  
If yes, check box; go to question 1 in Employment Location; questions 1-5 & 7-17 will be grayed-out.
- 7) Is this graduate employed in a law firm – 251-500?  
If no, go to question 8.  
If yes, check box; go to question 1 in Employment Location; questions 1-6 & 8-17 will be grayed-out.
- 8) Is this graduate employed in a law firm – 500+?  
If no, go to question 9.  
If yes, check box; go to question 1 in Employment Location; questions 1-7 & 9-17 will be grayed-out.
- 9) Is this graduate employed in a law firm of unknown size?  
If no, go to question 10.  
If yes, check box; go to question 1 in Employment Location; questions 1-8 & 10-17 will be grayed-out.
- 10) Is this graduate employed in business and industry?  
If no, go to question 11.  
If yes, check box; go to question 1 in Employment Location; questions 1-9 & 11-17 will be grayed-out.
- 11) Is this graduate employed in a government position?  
If no, go to question 12.  
If yes, check box; go to question 1 in Employment Location; questions 1-10 & 12-17 will be grayed-out.
- 12) Is this graduate employed in a public interest position?  
If no, go to question 13.  
If yes, check box; go to question 1 in Employment Location; questions 1-11 & 13-17 will be grayed-out.
- 13) Is this graduate employed in a judicial clerkship - federal?  
If no, go to question 14.  
If yes, check box; go to question 1 in Employment Location; questions 1-12 & 14-17 will be grayed-out.
- 14) Is this graduate employed in a judicial clerkship – state or local?  
If no, go to question 15.  
If yes, check box; go to question 1 in Employment Location; questions 1-13 & 15-16 will be grayed-out.

- 15) Is this graduate employed in a judicial clerkship – other?  
If no, go to question 16.  
If yes, check box; go to question 1 in Employment Location; questions 1-14 & 16-17 will be grayed-out.
- 16) Is this graduate employed in education?  
If no, go to question 17.  
If yes, check box; go to question 1 in Employment Location; questions 1-15 & 17 will be grayed-out.
- 17) Is this graduate employed with employer type unknown?  
If no, go to question 1 in Employment Location.  
If yes, check box; go to question 1 in Employment Location; questions 1-16 will be grayed-out. (Note: if graduate's Employment Status is "employed – job category undeterminable" and the graduate's Employment Type is also unknown, check yes to this question.)

### **Employment Location**

- 1) Is this graduate employed in the United States?  
If no, go to question 2.  
If yes, select the state in which this graduate is employed; question 2 will be grayed-out; Go to End
- 2) Is this graduate employed in a foreign country?  
If yes, enter the foreign country in which graduate is employed question 1 will be grayed-out; Go to End.



Section of Legal Education  
and Admissions to the Bar

# 2017 Employment Questionnaire (For 2016 Graduates)

## DEFINITIONS & INSTRUCTIONS

## 2017 ABA EMPLOYMENT QUESTIONNAIRE DEFINITIONS AND INSTRUCTIONS

Employment information is reported to the American Bar Association for accreditation and regulatory purposes. Accordingly, **the ABA Employment Questionnaire must be completed strictly in accordance with these definitions and instructions. Do not rely on instructions, definitions or guidance that may be provided with any other graduate employment survey and that may be inconsistent with these definitions and instructions.** Relying on the guidance provided by NALP (National Association for Legal Career Professionals) with its survey or relying on Symplicity to import data to the Employment Questionnaire may or may not result in data that meet the requirements of these instructions and definitions.

### GENERAL DEFINITIONS

**Graduates included and status date.** This Employment Questionnaire covers students who graduated from law school between September 1, 2015 and August 31, 2016. It seeks the employment status of those graduates as of March 15, 2017. Do not include any changes in the employment status of a graduate that occur after that date.

**Employed or employment.** A graduate is considered to be employed if the graduate has a position in which he or she receives remuneration for work performed. A volunteer position, from which the graduate does not receive remuneration, even if the position might ultimately lead to a remunerated position, is not considered to be employment.

A graduate must be performing the duties of the position as of March 15, 2017 in order to be considered employed. A graduate who has an offer for a position, even if the graduate has accepted that offer, but who has not commenced performing the duties of that position, is not considered employed. Similarly, a graduate who has an accepted offer, for example from a law firm, but employment under that offer is deferred until after March 15, 2017, is not considered employed. (For further information on the treatment of a graduate whose employment is deferred or does not commence until after March 15, 2017, see Employment Status, Unemployed – Start Date Deferred, below.) If as a part of the deferral arrangement, the graduate is provided a stipend to perform work as of March 15, 2017, for example at a legal services office, that graduate would be considered employed, but the graduate would be considered employed in a public interest position and not with a law firm, and the position would be long-term or short-term depending on the expected length of the public interest position.

**Short-term.** A short-term position is one that has a definite term of less than one year. Thus, a clerkship that has a definite term of one year or more is not a short-term position. It also includes a position that is of an indefinite length if the employer does not reasonably expect that the position will last for one year or more.

A position that the employer expects to last for one year or more is not a short-term position even though it is conditioned on bar passage and licensure. Thus, a long-term position

that is conditioned on passing the bar exam by a certain date does not become a short-term position because of the condition.

**Long-term.** A long-term position is one that the employer expects to last one year or more. A law school/university funded position that the law school expects to last one year or more may be considered long-term for purposes of this definition only if the graduate is paid at least \$40,000 per year. The possibility that a short-term position may evolve into a long-term position does not make the position a long-term position.

**Full-time.** A full-time position is one in which the graduate works a minimum of 35 hours per week. A full-time position may be either short-term or long-term.

**Part-time.** A part-time position is one in which the graduate works less than 35 hours per week. A part-time position may be either short-term or long-term.

### **EMPLOYMENT STATUS**

When a graduate is reported as employed, the reporting of the graduate's employment status must include whether the position is full-time or part-time, and long-term or short-term. The school must use diligent efforts to ascertain these aspects of the graduate's employment status. In the absence of reasonable certainty about the full-time or part-time, or long-term or short-term, status of a position, a school may make a reasonable inference from the known facts and circumstances about the specific position in question in deciding whether to classify the position as full-time or part-time, and long-term or short-term.

**1) Employed – Bar Passage Required.** A position in this category requires the graduate to pass a bar exam and to be licensed to practice law in one or more jurisdictions. Notwithstanding the preceding sentence, any position that is a Law School/University Funded position as that term is defined below must be classified as "Employed – Law School/University Funded" rather than Employed – Bar Passage Required. The positions that have such a requirement are varied and include, for example, positions in law firms, business, or government. However, not all positions in law firms, business, or government require bar passage; for example, a paralegal position would not. Positions that require the graduate to pass a bar exam and be licensed after beginning employment in order to retain the position are included in this category. Judicial clerkships are also included in this category.

**2) Employed – JD Advantage.** A position in this category is one for which the employer sought an individual with a JD, and perhaps even required a JD, or for which the JD provided a demonstrable advantage in obtaining or performing the job, but itself does not require bar passage or an active law license or involve practicing law. Notwithstanding the preceding sentence, any position that is a Law School/University Funded position as that term is defined below must be classified as "Employed – Law School/University Funded" rather than Employed – JD Advantage. Examples of positions for which a JD is an advantage include a corporate contracts administrator, alternative dispute resolution specialist, government regulatory analyst, FBI agent, and accountant. Also included might be jobs in personnel or human resources, jobs with investment banks, jobs with consulting firms, jobs doing compliance work in business and industry, jobs in law firm professional development, and jobs in law school career services



offices, admissions offices, or other law school administrative offices. Doctors or nurses who plan to work in a litigation, insurance, or risk management setting, or as expert witnesses, would fall into this category, as would journalists and teachers (in a higher education setting) of law and law related topics. It is an indicator that a position does not fall into this category if a JD is uncommon among persons holding such a position.

**3) Employed – Professional Position.** A position in this category is one that requires professional skills or training but for which a JD is neither required nor a demonstrable advantage. Notwithstanding the preceding sentence, any position that is a Law School/University Funded position as that term is defined below must be classified as “Employed – Law School/University Funded” rather than Employed – Professional Position. Examples of persons in this category include a math or science teacher, business manager, or performing arts specialist. Other examples include professions such as doctors, nurses, engineers, or architects, if a JD was not demonstrably advantageous in obtaining the position or in performing the duties of the position.

**4) Employed – Non-Professional Position.** A position in this category is one that does not require any special professional skills or training. Notwithstanding the preceding sentence, any position that is a Law School/University Funded position as that term is defined below must be classified as “Employed – Law School/University Funded” rather than Employed – Non-Professional Position.

**5) Employed – Law School/University Funded.** Except as noted below, a position is "Law School/University Funded" if it is funded in whole or in part, directly or indirectly, by the graduate's law school or university. A position is funded directly if the graduate is on the payroll of the law school or the university of which it is a part. A position is funded indirectly if the law school or the university of which it is a part funds another entity in any way and in any amount to pay the salary. A position also is funded indirectly if it is paid through funds solicited from or donated by an outside supporter of the law school or university. Thus, a position in the law library is funded directly by the law school or the university. A position in a legal services office or a law firm that is funded in any amount by the law school or the university (either by the law school or university or solicited from or donated by an outside supporter of the law school or university) is funded indirectly by the law school.

For purposes of reporting under this section, however, a position is not considered "Law School/University Funded" if it meets both of the following criteria:

- (a) it meets the definition of a “long-term” position; and
- (b) the position and funding are open to qualified graduates of all ABA-approved law schools.

For example, a position in the office of a university’s general counsel with no expected end date, or a position as a professor with no expected end date, are likely examples of positions that would not be considered “Employed – Law School/University Funded” despite the technical status of the graduate on the payroll of the law school or university.

In reporting on the long-term or short-term duration of “Employed - Law School/University Funded” positions, schools must distinguish between a commitment to fund a position for a year or more, and the additional expectation on the part of the school that the position will last for a year or more. The fact that the school makes a commitment to the graduate to fund the position for a year or more does not in itself establish the required expectation by the law school that the position will last a year or more. Instead, the law school must expect that the graduate will remain in the position for at least a year. Past experience with the length of time that previous graduates have been employed in similar positions is probative of a school's expectations; however, the expectation of the law school is the primary standard for determining whether a position should be reported as long-term or short-term.

The position may be part-time or full-time. Thus, a graduate working 20 hours per week as a research assistant would be included as part-time; a graduate working 40 hours per week in the law library would be included as full-time.

Because the information to answer this question is inherently available to the law school, the burden of answering this question is on the law school and does not depend on the answer that the graduate may provide in any employment survey. Accordingly, either a “yes” or “no” must be checked.

**6) Employed – Job Category Undeterminable.** The graduate is employed, but there is insufficient information available to determine into which of the above categories the position should be placed. This category should rarely be used and then, most often, only when the career services office knows nothing more than the fact of employment.

**7) Pursuing Graduate Degree Full-Time.** The graduate is pursuing further graduate education as of March 15, 2017. Such academic programs include degree-granting and non-degree granting programs. Whether a graduate is enrolled full-time is determined by the definition of full-time given by the school and program in which the graduate is enrolled.

**8) Unemployed – Start Date Deferred.** The graduate has accepted a written offer of employment by the March 15th reporting date, but the start date of the employment is subsequent to March 15th. In order to qualify in this category, the start date must be identified with certainty, or the employer must be compensating the graduate until actual employment begins.

**9) Unemployed – Not Seeking.** As of March 15, 2017, the graduate is “not seeking” employment outside the home and is not employed. Graduates who are not seeking employment because of health, family, religious, or personal reasons are included. A graduate who is performing volunteer work and is not seeking employment is included. Also included is a graduate who was offered a position, turned it down, and is not seeking further employment as of March 15, 2017.

**10) Unemployed – Seeking.** As of March 15, 2017, the graduate is “seeking” employment but is not employed. A graduate who is performing volunteer work and is seeking employment is included. Also included is a graduate who was offered a position, turned it down, and is seeking another position as of March 15, 2017. A graduate who is studying for the bar exam and is not

employed as of March 15, 2017 is considered to be seeking employment unless classification of the graduate as “not seeking” can genuinely be supported by the graduate’s particular circumstances. A graduate who is employed as of March 15, 2017 but seeking another job should be reported in an employed category.

**11) Employment Status Unknown.** The law school does not have information from or about the graduate upon which it can determine the graduate’s employment status.

## **EMPLOYMENT TYPE**

**1-9) Law Firms.** A law firm is a group of attorneys practicing law together regardless of their specific legal relationship. Any job in a law firm, including associate, law clerk, law firm librarian, paralegal, and clerical position, is included. A law firm is included if it is a private, for-profit firm even though it may perform substantial public interest work. However, a firm whose practice primarily involves under-represented clients, or groups that advocate for community interests, is included in Employment Type, Public Interest, below.

A graduate hired by, and working directly for, a law firm on a contract basis is included. However, a graduate working at a law firm but employed by an agency that places attorneys in temporary positions is included in Employment Type, Business and Industry, below.

Questions 1-9 ask for the total number of attorneys in the entire firm. If the firm has multiple offices, this includes the total of all attorneys in all of the offices. All attorneys employed in all offices should be included regardless of their status in the firm.

The category of “solo practice” (Question 1) applies to a graduate who has truly established his or her own solo practice. It does not apply to a graduate who is unemployed, but who may be willing to take an occasional client while still seeking employment. If the graduate is a clerk or associate for a solo practitioner, the firm size should be “Law firm – 2-10 (Question 2).”

**10) Business and Industry.** Business and industry employers include legal temporary agencies, accounting firms, investment banking and financial institutions, entertainment/sports management companies, insurance companies, management consulting firms, publishing houses, technology/e-commerce companies, trade associations, etc.

Positions held in business and industry include temporary attorney work, temporary law clerk or paralegal work, in-house counsel, management, business development/sales/marketing, human resources, consulting, etc. In-house counsel includes positions with the legal department of a company if that position reports directly or indirectly to the office of general counsel.

**11) Government.** Government employers include federal, state and local governments. Government positions include positions in governmental agencies, military positions, and prosecution positions. Government positions also include governmental public defender and appellate defender positions.

**12) Public Interest.** Public interest positions include legal services positions that are funded by the Legal Services Corporation or a similar funding entity; positions with other organizations that provide indigent or reduced-fee legal services, such as prisoners’ legal services and campus legal services; and positions with public interest and non-profit employers, including private non-profit advocacy, religious, social service, fund-raising, community resource, or cause-oriented organizations. Public interest employers also include labor unions, non-profit policy analysis and research organizations, and public and appellate defender positions not funded by the government.

**13-15) Judicial Clerkships.** Judicial clerks include those who are assigned to a specific judge, as well as those who perform duties for two or more judges on a court. Separately report federal clerkships and state and local clerkships. Federal clerkships and state and local clerkships include clerkships for judges or courts of governmental agencies. Report clerkships that are not appropriately federal clerkships or state or local clerkships as “other.” Thus, a clerkship for an international or foreign court should be reported as “other.” Clerkships for the District of Columbia Superior Court and the District of Columbia Court of Appeals are “state and local” clerkships.”

Do not include in this category a graduate who obtained a clerkship that is to start after March 15, 2017. Report that graduate according to his or her employment status as of March 15, 2017.

**16) Education.** Education positions include those at any academic level, including elementary, secondary, and higher education, and regardless of whether they are at private or public institutions. Positions include faculty member, teacher, librarian, and administrator; positions also include law school funded positions such as research “fellow” and clinic staff attorney. Positions outside the academic sphere of an educational institution, such as positions at university hospitals and similar university-related entities, should be reported as a position in business and industry if the institution is a private institution or government if the institution is public.

This category only includes employment in an educational institution; it does not include pursuing a degree or being enrolled in an academic program at an educational institution.

**17) Employer Type Unknown.** The graduate is employed but the law school does not have sufficient information upon which it can determine the graduate’s employment type.

### **EMPLOYMENT LOCATION**

**1) Employed in the United States.** Is the graduate employed in the United States? If so, select the state in which the graduate is employed.

**2) Employed in a foreign country.** Is the graduate employed in a foreign country? If so, enter the country in which the graduate is employed.