

Ogletree  
Deakins



# Strategies, Tactics, and Benchmarks for the Return-to-Work World:

Ogletree's Survey of Top Decision-Makers

**June 2021**

Analysis for moving forward together

# Message From Matt Keen

During the pandemic, much has changed. Employers across the world have scrambled to adapt to new ways of working and have dealt with novel issues and challenges. To assist employers as we emerge from the pandemic, we recently developed a benchmarking survey so that legal decision-makers at top companies could share their experiences and learn valuable insights from their colleagues. The goal of the survey was to define the key issues facing in-house counsel and HR professionals and provide helpful benchmarking data based on the responses.

Thank you to everyone who provided their input. We hope that you will find the data interesting and informative. Please feel free to reach out to me if you have any questions.



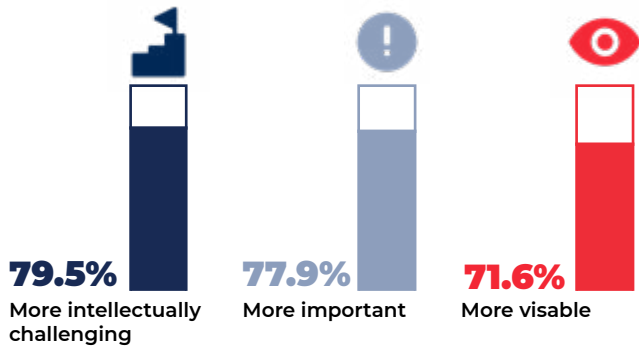
C. Matthew Keen  
*Managing Shareholder, Ogletree Deakins*



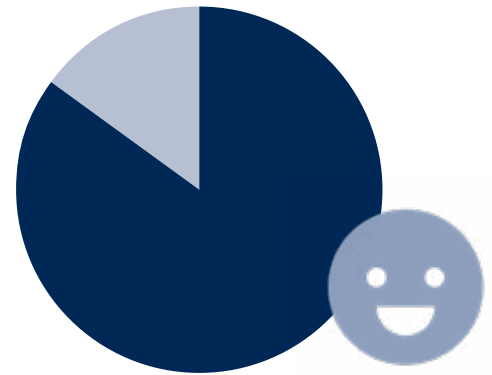
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## Positive Changes and Optimism



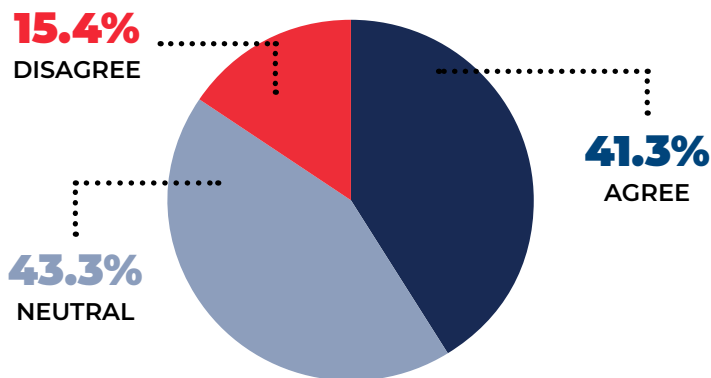
Many respondents see a positive change in their roles in the current environment. **79.5%** agree or strongly agree that the current environment makes their role more intellectually challenging, **77.9%** say that the pandemic has made their role more important, and **71.6%** say the pandemic has made their role more visible.



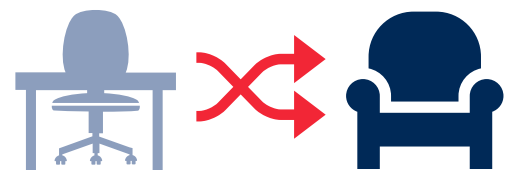
**85.1%**

of respondents are optimistic about their company's future.

## Work Cultures Changing Due to the Pandemic



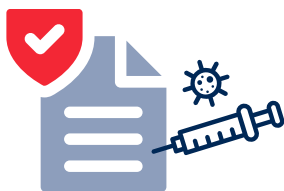
**41.3%** agreed with the statement that their staff is more productive as they work from home—but **43.3%** were neutral on the issue, and **15.4%** disagreed.



About **55.1%** of companies say that their staff has developed a work culture that is somehow different than pre-pandemic.

# Pandemic—Return to Work

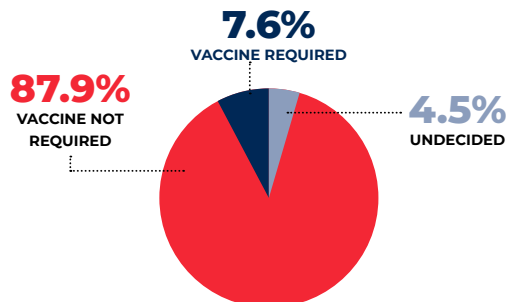
Currently:



## 58.2%

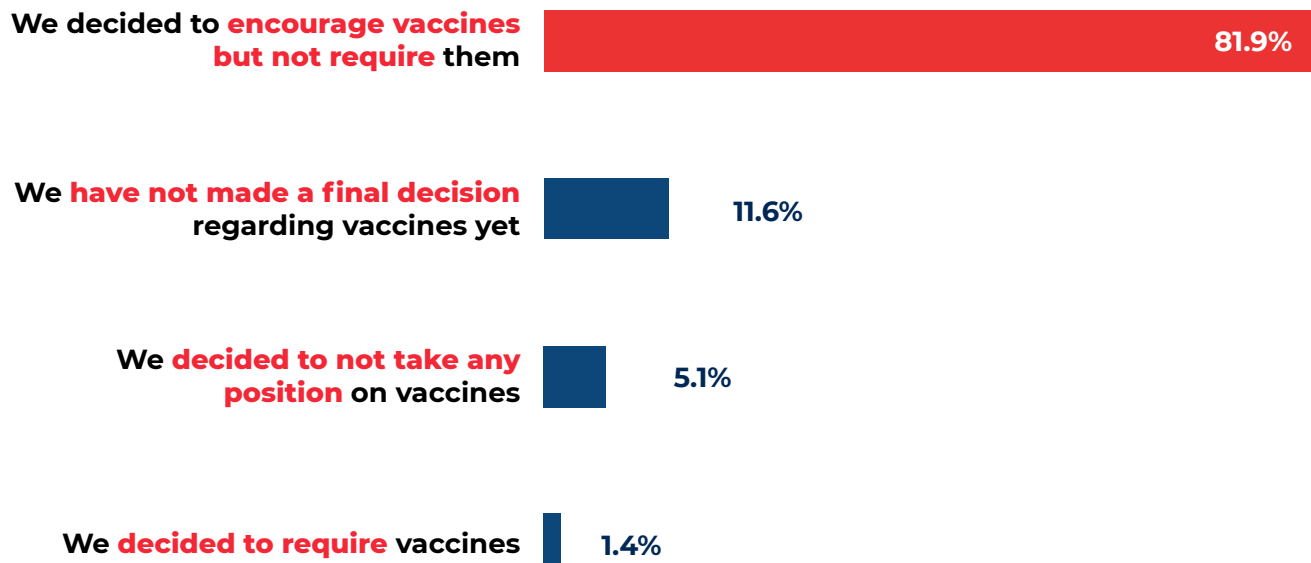
of companies have or plan to develop a COVID-19 vaccine policy.

### How are companies leaning regarding the vaccine?



Only **7.6%** of companies are leaning towards requiring employees to be vaccinated as a condition of returning to the workplace. A full **87.9%** are leaning against requiring a vaccine, and **4.5%** are undecided.

## Which of the following statements best reflects your company's COVID-19 vaccine policy?



# Pandemic—Return to Work

In the next 12 months:



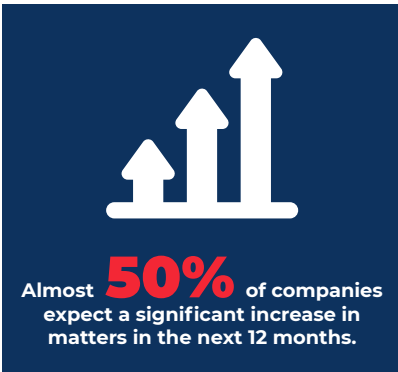
# 73.5%

of companies plan to use work-from-home long after the pandemic ends.

Unsurprisingly, **73.5%** of companies will be watching their budgets more closely, with **49.2%** of companies developing more formal processes for workflow and **43.9%** implementing new technology to assist.

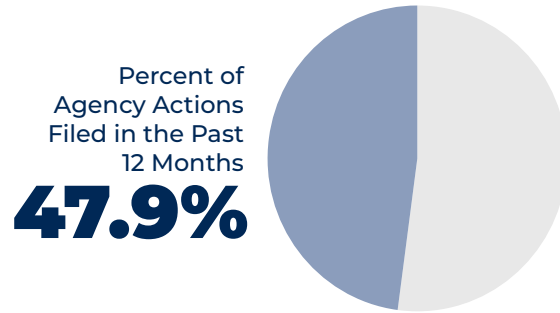
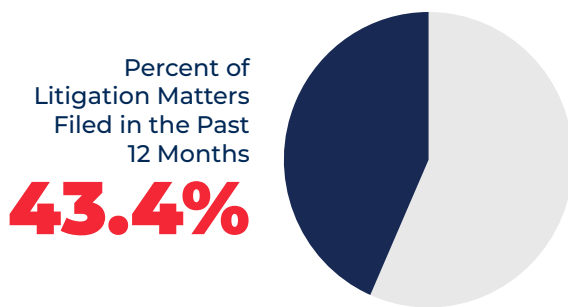


# Increase in Matters and Aggressive Agencies



## Recent Filings

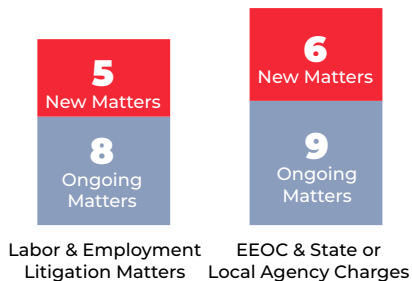
### Almost Half of Labor & Employment Litigation Matters and EEOC and State or Local Agency Charges Filed in the Past 12 Months



## New Matters

### New Matters to Jump by Two-Thirds in the Next 12 Months

New Labor & Employment Litigation Matters and Agency Charges Anticipated



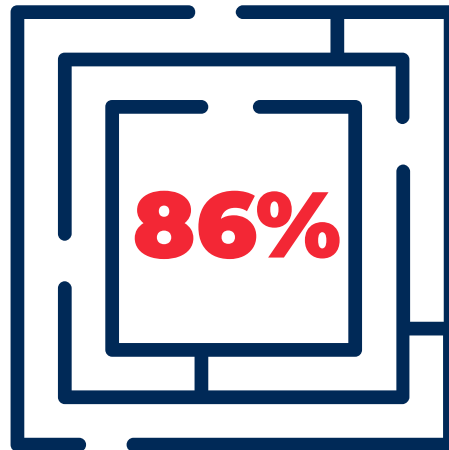
### Companies Facing Almost Equal Numbers of Actions and Litigation

Median Number of Matters/Charges Being Managed Today



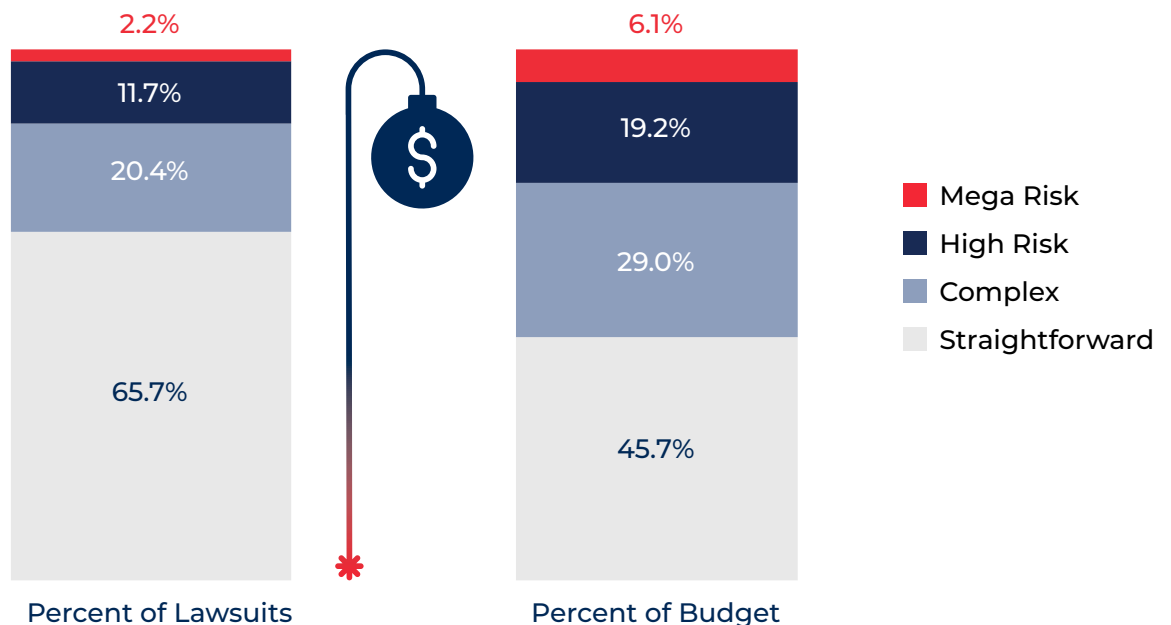
# Multi-Locality Issues Are a Pervasive Challenge

Respondents who believe multi-state and multi-locality compliance is a challenge:



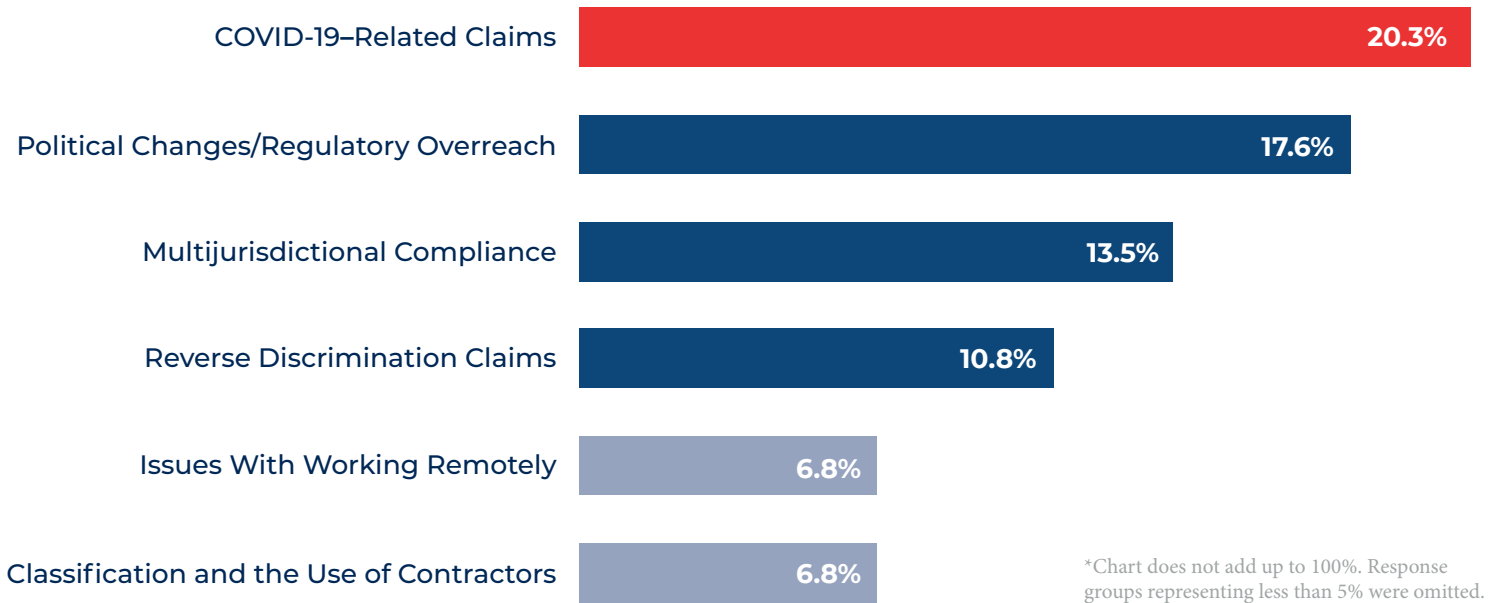
## Riskier Matters Take the Bulk of the Budget

Distribution of Employment Lawsuits and Budget by Risk Level



## Biggest Risk or Under-Recognized Issue

Percent of Respondents





## What do you think is the biggest risk or under-recognized issue no one is really talking about?

“

Ramped up CFBP enforcement and how they will go about it now that they are in the cat bird's seat again.

”

“

State law compliance is not a huge monetary risk, but a compliance challenge.

”

“

Challenges and risks once everyone returns to office. Liability due to bringing everyone back.

”

“

The impending backlash against 'woke' culture and a wave of reverse discrimination claims.

”

“

Hiring and training will be an issue when workplaces go to hybrid-remote models.

”

“

Over-utilization and reliance on the 'gig workforce' is an under-recognized issue.

”

# Wage and Hour Posing the Biggest Risk, Followed by Discrimination



**33%**

believe **General Wage and Hour** matters pose the biggest risk to their organization.

**12.5%** Discrimination Claims

**8.9%** Any Class Action

**8%** PAGA Claims

**7.1%** Americans with Disabilities Act

**6.3%** Misclassification

\*Chart does not add up to 100%. Response groups representing less than 5% were omitted.

# The Next Wave of Labor and Employment Issues

What do you see as the next wave of labor and employment issues that companies will face in the next 24 months?

**22.2%**

**Working From Home/  
Returning to Work**

**18.2%**

**COVID-19-related Liability**

**15.2%**

**Union Organization**

**8.1%**

**Diversity and  
Inclusion Issues**

**7.1%**

**Compliance With  
State-Specific Laws**

**6.1%**

**General Wage and Hour**

\*Chart does not add up to 100%. Response groups representing less than 5% were omitted.

### What do you see as the next wave of labor and employment issues that companies will face in the next 24 months?

“

Employees wanting to continue to work from home even after the pandemic is over. (Will it ever be over?!)

”

“

Disability and nondiscrimination claims related to work expectations post-COVID; wage & hour.

”

“

More aggressive unionization efforts; greater regulatory scrutiny; more reporting obligations.

”

“

Reverse discrimination claims arising out of ‘diversity, equity and inclusion’ policies and programs.

”

“

More states adopting their own forms of PAGA actions. Continued growth of the patchwork of onerous local ordinances that create significant compliance burdens.

”

“

Alleged wage and hour class actions based on time clock rounding policies. Alleged wage and hour claims based on work from home expenses. Alleged violations of California Pay Equity Act.

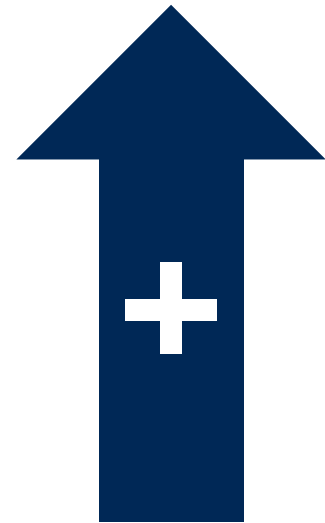
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# Utilizing Outside Counsel and Hiring In-House Counsel

In the coming 12 months:

**43.3%**

of companies will be utilizing  
outside counsel more



Only

**9.8%**

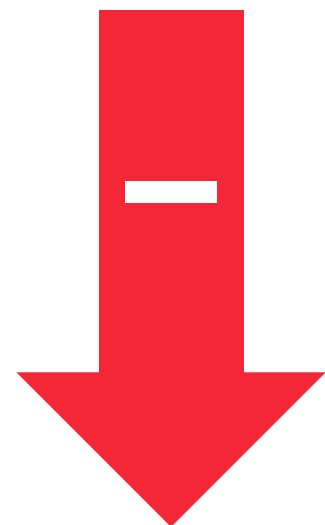
plan to reduce outside counsel



With respect to internal  
hiring, over

**60%**

of companies do not expect to add  
in-house attorneys



# Companies Looking for New Ideas, AFAs From Outside Counsel



Nearly **90%**

of companies want to hear new ideas and approaches from their **outside counsel.**

**59%**

of companies say they want their law firms to use more **alternative fee arrangements.**

■ Strongly Disagree 
 ■ Disagree 
 ■ Neutral 
 ■ Agree 
 ■ Strongly Agree

I would like to use **secondments** to manage the changes in workload.



We plan to bring **more work in house.**



I will **keep the most interesting matters** to work on myself.



# Companies Using 5 Firms to Manage Most Labor Issues

# 2

**Primary Firms Are Doing the Heaviest Lifting**

# 3

**Secondary Firms Are Covering the Remaining Substantive Work**

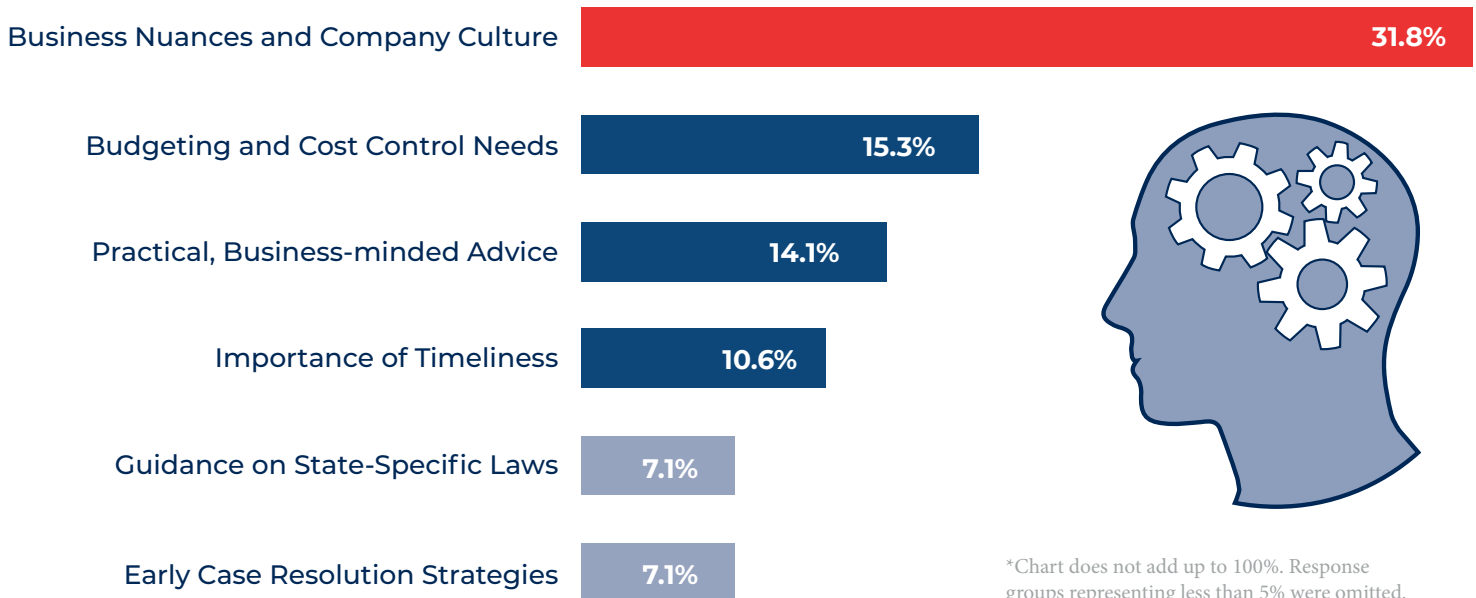
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## What Clients Want Outside Counsel to Understand

### The One Thing Outside Counsel Should Better Understand

*Percent of Respondents*



\*Chart does not add up to 100%. Response groups representing less than 5% were omitted.

### What is the one thing you really want outside counsel to better understand to help you better manage your labor and employment matters?

“

Learn the internal structure of the client to understand how decisions are made.

”

“

The need for open, transparent front-end budgeting and communications flowing primarily through inside counsel rather than directly with company business groups/HR.

”

“

Be concise and pragmatic. Distill what you know into advice I can use right away.

”

“

Demands on in-house counsel are high. Quick, effective and efficient solutions with the long-term relationship in mind are appreciated.

”

“

Helping offer consolidated guidance and overviews for multinationals or just US that incorporates state specific nuances in a practical way.

”

“

We always want to avoid dragging our business partners into litigation if we can help it. We want outside counsel to show they are invested in my interests as a client to work toward resolution and consider all options for doing so.

”



# Methodology and Approach

Independent, Unbiased Research  
Based Solely on Feedback From  
Legal Decision-Makers



## 2021 Survey Participant Demographics

- Nearly 190 online interviews of senior in-house legal and HR decision-makers
- Conducted from April 1, 2021, through May 11, 2021