

## COUNSEL'S CORNER:

# The U-LPQ and Employment Discrimination Investigations: What Recruiters and Candidates Need to Know

By Hilary P. Gerzhoy, Esq.

Legal recruiters are no strangers to the intricacies of lateral partner questionnaires. These documents—especially the Uniform Lateral Partner Questionnaire (U-LPQ)—serve as a foundational part of the target law firms' due diligence when assessing lateral candidates. They inquire into a candidate's practice, financials, client relationships, and personal and professional conduct. One set of questions that has taken on heightened significance in recent years pertains to employment discrimination investigations.

### The relevant question from the U-LPQ reads:

*"Have you ever been the subject of a legal malpractice claim, breach of trust claim, employment discrimination claim, employee discrimination grievance, employee discrimination investigation (including harassment or retaliation)?"<sup>1</sup>*

This broad question reflects a fundamental shift in the legal industry: firms are no longer willing to rely on whispered reputational checks or assume that prior employers will quietly usher out problematic behavior. In a post-#MeToo era, and in a market where firm culture and reputational risk are top of mind, law firms are demanding transparency, and recruiters play a pivotal role in ensuring it.

### What This Question Means for Candidates

For candidates, particularly those who have been the subject of such a complaint or investigation, this question raises significant personal and professional stakes. But it is important to understand what is being asked, and what is not.

First, the U-LPQ does not limit the inquiry to formal complaints filed with government agencies or courts. It explicitly includes "grievances" and "investigations," which are often entirely internal to the existing firm. A fact-finding process undertaken by a firm's HR department, a compliance officer's inquiry, or an outside investigation conducted by retained counsel all fall within the scope.

The breadth of this inquiry reflects the seriousness with which firms now treat workplace conduct. Still, the U-LPQ does not ask the candidate to characterize the result. It asks only whether they have been the subject of such a matter. That includes situations where no finding of wrongdoing was made.

Critically, a "yes" answer does not automatically disqualify a candidate. But it does prompt further scrutiny. Firms will ask for a narrative explanation and may request documentation or contact with prior employers. If a candidate fails to disclose a known complaint or investigation and the hiring firm learns of it later—whether from references, prior firm partners, or press coverage—the nondisclosure can be more damaging than the underlying issue itself.

### Ethical and Practical Considerations for Recruiters

For recruiters, this question presents a complex, but critical challenge. Recruiters must balance loyalty to the candidate with candor and professionalism towards the target firm. What happens if a recruiter knows a

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candidate has been the subject of a prior discrimination investigation, but the candidate does not disclose it in his or her U-LPQ? Can the recruiter encourage disclosure? Must the recruiter intervene?

The recruiter's legal obligations will vary depending on contracts and jurisdiction, but the professional and reputational considerations are clear. A recruiter who knowingly presents a candidate without disclosure of a material fact that later emerges risks eroding trust with the target firm and damaging their own credibility in the market. For recruiters who are licensed lawyers, the ethics rules impose an additional burden: mandating honesty in interactions with third parties<sup>2</sup>, and a requirement to report lawyers whose violation of the Rules of Professional Conduct "raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects."<sup>3</sup> It should also be noted that the NALSC Code of Ethics requires recruiters to disclose all facts material to the hiring decision.

While recruiters are not investigators, once they are aware of a relevant issue—particularly one within the scope of the U-LPQ—it is best practice to have a direct and confidential conversation with the candidate. That discussion should clarify what the question covers and the importance of transparency. It is at this point in the process where consulting with an ethics lawyer can be paramount. Recruiters can, and should, flag the issue, but they should not be providing legal advice to candidates. Advice on how to frame a response to the question, and the ramifications of both doing so and failing to do so, must be given by a practicing lawyer. Legal ethics lawyers help frame the candidate's disclosure, provide necessary context, and anticipate firm concerns. By flagging the issue, and looping in an ethics lawyer, recruiters can balance helping the candidate navigate a sensitive part of the process while protecting the interests of the target firm and the recruiter's industry reputation.

### A Culture of Accountability?

The inclusion of this question in the U-LPQ reflects the profession's increasing emphasis on accountability. Firms want to ensure that potential partners align with their values and do not pose cultural, legal, or reputational risks. And they are right to ask.

But the process must also be fair. Not every complaint has merit. Not every investigation concludes with a finding. Context matters. Recruiters and firms must resist the instinct to treat any disclosure as disqualifying and instead engage in a nuanced review of the facts. I have personally repre-

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sented lawyers who answered “Yes” to this question and landed terrific placements. The details matter.

As the U-LPQ becomes more widely adopted, candidates and recruiters should expect that conduct-related disclosures—especially around employment discrimination, harassment, and retaliation—will become a standard part of the lateral conversation. Those types of questions already appear on many, if not most, individual firm LPQs. The conversations they spark may be uncomfortable, but it is also a step forward for professionalism in the legal industry.

### Best Practices for Recruiters

To navigate this terrain effectively, consider the following best practices:

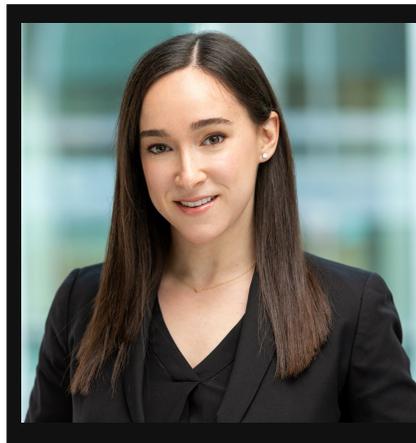
- **Start early:** Educate candidates at the outset about the scope of the U-LPQ and individual firm LPQs and the importance of honest disclosure.
- **Encourage candor:** Create a confidential, judgment-free space where candidates feel comfortable discussing past complaints or investigations.
- **Engage an ethics lawyer to help craft the narrative:** An ethics lawyer can guide candidates in presenting facts truthfully and contextually and act as an intermediary between the candidate and the target firm.
- **Know your clients:** Understand how each firm handles these disclosures so you can prepare the candidate and manage expectations.
- **Keep records:** Document candidate disclosures and communications in case questions arise later.

In today’s lateral market, a partner’s portable business is crucial—but so is their track record of conduct. Recruiters are both dealmakers and gatekeepers, helping firms avoid risk and making sure candidates put their best foot forward.

[1] *Uniform Lateral Partner Questionnaire (U-LPQ), 2023 ed., Question 36.* The full question reads: “Have you ever been the subject of a legal malpractice claim, breach of trust claim, employment discrimination claim, employee discrimination grievance, employee discrimination investigation (including harassment or retaliation)?”

[2] See ABA Model Rule 8.4(c) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation).

[3] See ABA Model Rule 8.3(a) (“A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.”)



Hilary Gerzhoy is a partner and Vice Chair of the Legal Ethics and Malpractice Group at HWG LLP. She is the Chair of the D.C Rules of Professional Conduct Review Committee and an Adjunct Professor of Law at Georgetown Law School, where she teaches legal ethics. In the last year, she has represented more than 50 partners making lateral moves.

P: (202) 730-1342  
E: [HGerzhoy@hwglaw.com](mailto:HGerzhoy@hwglaw.com)  
W: [www.hwglaw.com](http://www.hwglaw.com)