

BALANCED

LIVES

**CHANGING THE
CULTURE OF
LEGAL PRACTICE**

AMERICAN BAR ASSOCIATION
COMMISSION
On
WOMEN
In The
PROFESSION

ABA
Defending Liberty
Pursuing Justice

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Prepared for the Commission by
Deborah L. Rhode

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It took the increased participation of women in our profession to awaken a consciousness regarding issues of work and family balance. This is fairly disheartening because our fundamental responsibility to family and community should not be gender-specific, nor should any of the issues raised in this manual be considered ‘women’s issues’. The sociological reasons why women in our society still bear a disproportionate share of the child-rearing and household responsibilities (even as they maintain professional careers) run deep and are well beyond the scope of our profession. Nevertheless, it should be noted that this phenomenon continues to strike at the heart of women’s equality in our culture.

On a more positive note, however, it is because of diversity within our profession that we are discussing this important issue. This dialog is yet another illustration of the positive effect diversity has on the health of our profession. We are clearly a better, more enlightened bar when we marshal the full spectrum of both male and female experiences and perspectives.

Ultimately, the issues addressed in this manual speak to the very purpose of our lives. Most of us were attracted to the law for the nobility of its principle; the rule of law and the peaceful resolution of disputes that is so essential for any society to flourish. But, if we endeavor to be a positive force in our nation’s progress, we must

also be good parents and good spouses, good friends and good neighbors. We must uplift those less fortunate. A lawyer, after all, is also a citizen. The noble life is a life of balance, with each obligation attended to. No responsibility should be completely sacrificed for the benefit of another. A fair and equitable justice system is crucial to our country’s well being. But so too is good parenting.

Through this manual, the ABA Commission on Women has set to work upon the ambitious task of helping foster a hegemonic change in the way we view work. This manual, through its detailed examples and painstaking research is a significant tool in this effort. But the work must be done by the thousands of legal practitioners of good faith who seek not only to improve their own lives, but also to make a marked change in the way the profession operates. It will require the faith, honesty and diligence of both employers and employees, partners and associates, clients and law firms. Most of all, it will necessitate what is quite possibly the most difficult and fearful task of all; to set aside one’s preconceived attitudes, biases and comfort levels and to open one’s mind to new ways.

Robert E. Hirshon, President
American Bar Association
September 2001

The Commission on Women in the Profession

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ABOUT THE COMMISSION

The Commission on Women in the Profession was created in 1987 to assess the status of women in the legal profession and to identify barriers to their advancement. Hillary Rodham Clinton, the first chair of the Commission, set the agenda for the Commission to change the face of the legal profession.

Now, in its second decade, the Commission aims not only to address the challenges that women lawyers face, but also to combat bias in the justice system and to improve the quality of life for the profession generally. Drawing upon the expertise and diverse backgrounds of its twelve members who are appointed by the ABA President, the Commission develops programs, policies, and publications to promote equal opportunities.

As the national voice for women in the profession, the Commission is dedicated to promoting fairness in the justice system and diversity in legal workplaces.

The Commission's Newsletter

Published three times per year, *Perspectives* gives you crucial insights on professional development:

- Advice and resources for career advancement
- Political and legal developments that affect women in the profession
- Profiles of leading women lawyers
- Activities of the Commission and other bar associations and women's rights organizations

To subscribe to *Perspectives*, you may call (800) 285-2221 or order through the Commission's website at www.abanet.org/women

New Commission Publications

The Unfinished Agenda: Women and the Legal Profession This report provides the most comprehensive contemporary review of the status of women in the Amer-

ican legal profession and justice system. This is the Commission's third status report chronicling progress toward gender equality and progress yet to be made concerning issues such as gender stereotypes, workplace structures, support networks, sexual harassment, and bias in legal education and the justice system. **The Unfinished Agenda** provides an overview of barriers to gender equality and recommends appropriate responses.

The Difference "Difference" Makes: Women and Leadership A forthcoming publication will highlight the findings of the Women's Leadership Summit held in the spring of 2001 and co-sponsored by the ABA Office of the President and The Kennedy School of Government at Harvard University. This publication will explore the difference gender makes in both access to leadership and in its exercise. With a focus on law, politics, and business – three arenas of greatest public influence – this report explores the difference gender makes in leadership opportunities, styles, effectiveness, and priorities. Strategies for change at both an institutional and individual level are also included.

Second to None: Best Practices for Women Lawyers and Their Employers Based on the results of focus groups held nationwide as well as other research, this guide offers information about institutional and individual approaches that foster women lawyers' progress into positions of power and leadership at law firms and corporations. The guide also includes successful strategies from senior women lawyers, managing partners, general counsels, rainmakers, members of law firms' most powerful committees and other resources used to help women get beyond the second glass ceiling.

To order these new publications, or others from the ABA Commission on Women, call (800) 285-2221 or visit the Commission's website at www.abanet.org/women.



LAWYERS AND

BALANCED LIVES



I. HISTORICAL AND STRUCTURAL OVERVIEW OF THIS MANUAL

This manual is a response to lawyers across the country who seek a better balance between their personal and professional lives. A central mission of the American Bar Association's Commission on Women in the Profession is to address challenges created by the changing demographics and changing conditions of legal practice. The last quarter century has witnessed a dramatic growth both in the number of women in the profession and in the economic pressures that the profession faces. Women now constitute almost 30 percent of the American bar and about half of law schools' entering classes. Most of these women expect to combine their legal careers with significant family responsibilities. That expectation is also shared by growing numbers of men, particularly those in dual career couples. Yet today's lawyers are confronting pressures that make such a work/family balance increasingly difficult to achieve. Such pressures also limit the time available for other important pursuits, including the pro bono work that many lawyers find central to a balanced professional life.

In most settings, the pace and competitiveness of legal practice have rapidly accelerated. Technological innovation has heightened demands for instant accessibility, and profit-related concerns have pushed billable hours to unprecedented levels. The result, as experts note, is a "culture clash" between personal and professional commitments.¹ Loyalties to clients, colleagues, families, and pro bono causes often push lawyers in different directions. This manual is designed to help lawyers and their employers more effectively balance these competing demands.

The need for such a balance is not, of course, a new development. Shortly before the turn of the last century, Leila Robinson, the first woman admitted to the Massachusetts State Bar, put the question to an organization of women lawyers and law students: "Is it practicable for a woman to successfully fulfill the duties of wife, mother, and lawyer at the same time?"² At the turn of this century, when the American Bar Association asked that same question, about a third of surveyed female lawyers doubted that it was realistic to combine successfully the roles of lawyer, wife, and mother.³

Yet while these doubts and concerns are longstanding, they have taken on a new urgency. When Leila Robinson raised the issue, she was one of only about 500 women practicing law in the entire nation, and few of the profession's predominantly male practitioners were

assuming significant obligations in the home.⁴ There are now close to 400,000 women attorneys, most of whom will at some point have spouses or partners and children. The same is true of most of the nation's approximately 600,000 male attorneys, and a growing number are taking on substantial household responsibilities. Like other workers, lawyers also are increasingly likely to have caretaking obligations for elderly family members, a trend that is expected to accelerate over the next decade.⁵ For workers in this "sandwich generation," caught between the needs of both parents and children, the struggle for balanced lives presents a substantial challenge.

Legal practice has not caught up to these demographic realities. Workplace hours have increased dramatically over the last two decades, and what has not changed is the number of hours in the day.⁶ Most lawyers in private practice now bill close to 2000 hours a year or more.⁷ To charge fairly at that level typically requires at least 60 hour work weeks, and the obligations in most large firms are considerably higher.⁸ Technological improvements have reinforced expectations of total availability. Lawyers remain perpetually on call—tethered to the workplace through cell phones, emails, faxes, and beepers.⁹ In some fields, unpredictable deadlines, uneven demands, or frequent travel pose particular difficulties for those with significant caretaking commitments. Unsurprisingly, almost half of surveyed lawyers feel that they do not have enough time for themselves or their families.¹⁰ Almost three-quarters of lawyers with children report difficulty balancing professional and personal demands.¹¹ The number of women who doubt the possibility of successfully combining work and family has almost tripled over the past two decades.¹² Only a fifth of surveyed lawyers are very satisfied with the allocation of time between work and personal needs.¹³ A desire for more time to meet personal and family needs is one of the major reasons lawyers consider

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Although most legal employers have made some significant efforts to help lawyers balance personal and professional commitments, these initiatives have often fallen short. As research reviewed in this volume makes clear, many organizations' policies governing parental leaves, alternative schedules, family-related benefits, and pro bono service are inadequate. Many lawyers do not feel able to take advantage of the policies that are available. Close to half of surveyed attorneys doubt that their employers truly support flexible workplace arrangements, or that employees could adopt alternative schedules without adverse professional consequences.¹⁵ Although about 95 percent of law firms have policies that allow part-time work, only 3 percent of lawyers actually work part-time.¹⁶ In addition, while the vast majority of legal employers support pro bono work in principle, many fail to do so in practice. Most lawyers do not make substantial pro bono contributions, and the average for the bar as a whole is less than half an hour a week.¹⁷

These inadequacies in workplace structures carry a considerable cost, not only for individual attorneys but also for their employers, the profession, and the public. Excessive workloads are a leading cause of lawyers' disproportionately high rates of reproductive dysfunction, stress, substance abuse, and mental health difficulties. These, in turn, contribute to performance problems and liability risks.¹⁸ Inflexible schedules also are a primary cause of early attrition and glass ceilings for women in law firms.¹⁹ Part of the price is paid by employers, who incur excessive costs in recruiting and training replacements, and who cannot ensure diversity in upper-level positions.²⁰ In addition, the absence of support for pro bono services shortchanges thousands of individuals with urgent, unmet needs, as well as thousands of lawyers who have traditionally ranked public interest contributions among their most rewarding professional experiences. According to ABA surveys, young lawyers' greatest source of dissatisfaction with their legal

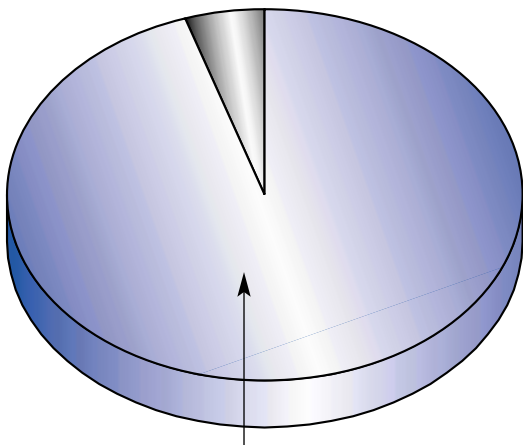
careers is a lack of connection to the social good.²¹ Inadequate support for pro bono work deprives many practitioners of opportunities to realize the values that led them to law in the first instance.²²

These problems cannot be easily resolved. But neither can they be easily evaded. Increasing numbers of women and men with substantial family commitments are entering practice. Increasing numbers of lawyers, law schools, courts, and bar associations are registering concerns about pro bono responsibilities. A profession seriously committed to equal opportunity and public service must do more to translate its principles into practice, and to create more opportunities for balanced lives. This manual is a step in that direction.

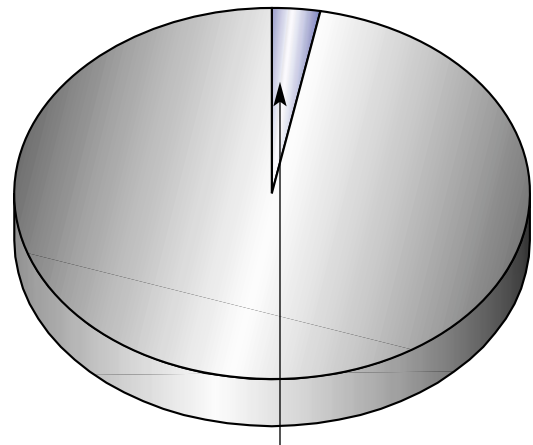
A. The Background of this Manual

The impetus for this manual came initially from hearings held in 1988 by the newly formed Commission on Women in the Profession. Participants at these hearings included prominent lawyers from every type of practice setting, directors of legal organizations, leaders of bar associations, law professors, law students, and judges. The Commission then met with ABA sections and received extensive comments from lawyers and legal employers. Throughout this process, a consistent theme emerged: the need to better accommodate lawyers' personal and professional commitments. Many requests for model policies governing sexual harassment convinced the Commission that guidance on this issue was also needed.

In response to these concerns, the Commission surveyed relevant research and requested information from approximately 500 firms of varying sizes throughout the country. More than a hundred firms responded by sharing insights and policies concerning sexual harassment, family leave, and alternative schedules. After reviewing these responses, the Commission interviewed representatives of firms with especially well-designed policies to determine how effectively they were working in practice. These policies, together with excerpts from Commission inter-



95% of law firms have policies that allow part-time work



3% of lawyers actually work part-time

views and hearings, became the basis for the first edition of this Manual, published in 1990. Over the next decade, *Lawyers and Balanced Lives* remained one of the ABA's most requested publications

In 2000, during the course of updating the Manual, the Commission once again began a process of extensive consultation and review of relevant literature. It quickly became clear that, while much has changed since the initial publication, much has remained the same. Since the Commission began its work, most employers have adopted sexual harassment and work/family policies.²³ State and local bar associations, women's professional organizations, and expert consultants have also published a wide array of model policies and materials. Yet despite such initiatives, many fundamental problems remain unresolved. This Manual explores the inadequacies in current workplace practices concerning balanced lives and identifies promising responses. A separate publication provides similar guidance concerning sexual harassment.

Like the first edition, this Manual focuses on the needs of lawyers rather than all legal personnel. The Commission's primary expertise involves the legal profession, and many organizations have determined that

different policies should govern support staff. However, as the discussion below indicates, many of the considerations supporting work/family initiatives apply to all individuals in legal workplaces, and the recommendations in this Manual could form the basis for general personnel policies.

B. The Structure of this Manual

Part I of this Manual begins with an overview of the challenges involved in fostering balanced personal and professional lives. It describes the obstacles both for lawyers and for legal employers, and summarizes the inadequacies of current workplace practices for all concerned. Discussion concludes with individual and institutional strategies for change, including model procedures for implementing work/family policies. Part II provides a model alternative work schedule. Part III provides a model family leave and medical policy. These sections also include charts summarizing key provisions in other model policies, analysis of these provisions, and discussion of issues that have proven most controversial or problematic. Where appropriate, the proposed model policies offer alternative strategies for addressing such issues.

II. THE PROBLEMS IN CURRENT WORKPLACE PRACTICES

A. The Problems for Lawyers

1. Excessive Hours, Unmanageable Schedules, and Inadequate Family-Related Benefits

The most commonly noted obstacle to a balanced life is the sheer number of working hours expected in many practice settings. The demands are greatest in large law firms, but expectations also have escalated in mid-sized firms, corporate legal departments, and public sector organizations.²⁴ The demands are not unique to law; the time available for family and community pursuits has shrunk for American workers in general over the last two decades.²⁵ However, increasing competition and salary levels have heightened pressures for lawyers. As noted earlier, work weeks of more than 60 hours are routine in many practice settings, and 40-hour weeks are considered part-time schedules.²⁶ The problem is compounded by the failure of many legal employers to acknowledge that escalating workloads *are* a serious

problem or one that they could and should address.

In 1962, an American Bar Association Lawyer's Handbook reported that "there are approximately 1300 fee earning hours per year" for an attorney with a normal schedule.²⁷ In 2000, a widely circulated account of the ABA's annual meeting reviewed schedules that currently pass for "normal." The story quoted the managing partner of one Wall Street firm, who acknowledged the importance of balance in lawyers' personal and professional lives, but concluded that his firm's quota of 2400 billable hours, "if properly managed," was "not unreasonable."²⁸ When that conclusion was reported at an ABA Commission meeting of women bar

leaders, the lawyers present had a different experience and a different view. Their perception, and the one shared in virtually every other recent survey of women in the profession, is that such demands are incompatible with a balanced life. As one associate in a New York Bar

Glass Ceiling study put it, "This is not a life."²⁹ Particularly in large firms, where grueling schedules are most common, some women find it "difficult to have a cat, much less a family."³⁰ A lawyer who billed 2200 hours in the year she was on maternity leave summarized the experience: "truth be told, that's no way to have a child."³¹

The hardships associated with extended hours are often exacerbated by unpredictable and uncontrollable timing. Part of the problem is inherent in legal practice. Especially in some fields, lawyers are routinely held hostage to schedules not of their own making. Court-imposed deadlines, client demands, and sudden market or legal developments can create unpredictable hours. New technologies impose expectations of immediate responses. In the view of many supervising attorneys, extended and unexpected schedules are part of life in the law. If women want to be "players," they should be willing to play by the existing rules.³² Those rules allocate pay, promotions, and sometimes even official "client first" awards for lawyers willing to put their personal lives on perpetual hold.³³ From this perspective, the choice resembles one that leading litigators are famous for putting to associates in high stakes cases: "Would you rather sleep or win?"³⁴

But such cases are not the mainstay of legal practice. Nor are all problems of oppressive schedules an inevitable byproduct of effective client representation. As noted earlier, while some peak demands are an inherent feature of practice, others are attributable to inadequate concern about the quality of life available for subordinates. Surveys of junior attorneys recount in depressing detail the unnecessary all night shifts, interrupted vacations, and frayed relationships that result from inadequate or insensitive planning by supervisors.³⁵ Not all personal sacrifices are worth the price. One recent winner of a "client first" by a Portland firm was a woman who canceled a trip to her first family reunion in 20 years. In recounting the story to an ABA Journal reporter, an associate put the relevant question: "Why are we rewarding this?"³⁶

Other problems in workplace policies involve the inadequacy of family-related benefits. Too many legal employers fail to provide benefits for domestic partners or to insure their full participation in professional and social events.³⁷ Too many organizations fail to offer reasonable accommodations for lawyers with disabilities.³⁸ Additionally, too few legal employers are following the lead of other public and private sector organizations in offering assistance with family-related needs. Many lawyers lack

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access to quality services, such as onsite childcare centers, emergency back-up care arrangements, and referrals for eldercare, before and after-school programs, and parental support groups. Inadequate access to such assistance can adversely affect job performance, morale, and retention.

2. A Gender and Generation Divide

The gap between what many lawyers need and what many legal employers provide is partly attributable to gaps across generations and gender. Most of those holding managerial positions are men who grew up in an era in which they were not expected to assume time-consuming family responsibilities. Few of these lawyers have had significant personal experience with the conflicts facing primary caretakers. Some of these men question whether mothers experiencing such conflicts can or should hold demanding legal positions, although rarely is anyone as candid as the partner who informed a colleague that “law is no place for a woman with a child.”³⁹ A more commonly expressed view is that the younger generation’s expectations of balanced lives are unrealistic and unreasonable. Lawyers often believe that if they managed without special accommodation of family-related needs, so can others. Recurrent refrains in management circles are: “I had to give up a lot. You [should] too.” “I had a family. I didn’t get time off. Why should you?” “It worked for me [to use full-time infant care] so it should work for you.”⁴⁰ Some lawyers who built their careers at substantial personal expense find it hard to empathize with younger colleagues who seem oblivious to those tradeoffs and who demand options that prior generations never had.

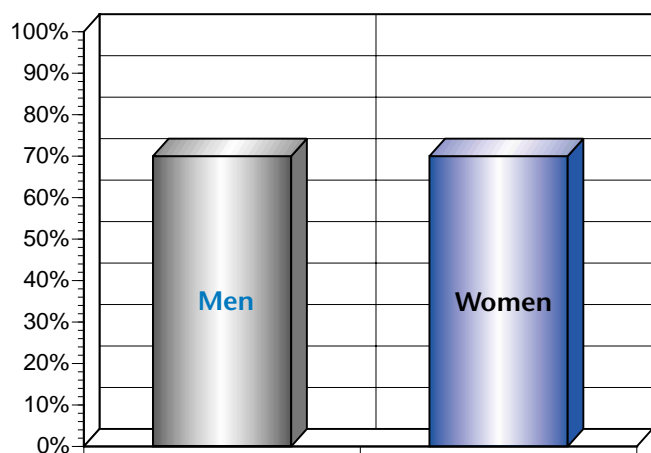
By contrast, these younger lawyers often see no reason to replicate the sacrifices of their predecessors. Other businesses and professions are attempting to accommodate balanced lives. Why can’t law? In recent surveys, most men as well as women indicate a willingness to

take lower salaries in exchange for more time with their families.⁴¹ Catalyst’s 2001 study of some 1400 lawyers found that about 70% of both men and women reported work/life conflict and that a third of men, along with almost half of women, reported work/life balance as one of their top three reasons for choosing their current employer.⁴² Many younger women lawyers also express concerns about ending up like some senior colleagues who either do not have children or who rarely get home in time to see them.⁴³ A generation of women who grew up expecting equal opportunity in the workplace is unwilling to settle for less, or to give up satisfying personal and family lives to achieve it.

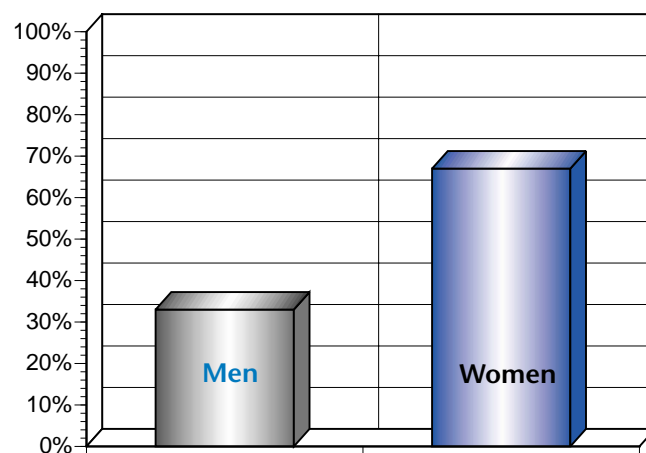
This shift in expectations and priorities is not unique to lawyers. Nor does it show signs of reversing. A 1999 cross-national survey of some 2500 university students found that over half identified “attaining a balance between personal life and career” as their primary professional goal.⁴⁴ A 2000 study by the Radcliffe Public Policy Center similarly found that the job characteristic that employees most often described as “very important” was “having a work schedule which allows me to spend time with my family.”⁴⁵ If employers want to attract this new generation’s most talented professionals, then workplace structures must adapt accordingly.

3. The Gap Between Policy and Practice

The problem in many legal workplaces involves not only the length and unpredictability of working hours, but also the absence of adequate alternative arrangements. In organizations without formal policies, women are often told not to worry; if they are well liked everyone will “bend over backwards” to find ways to keep them. Many of these women suspect that if they actually asked for flexible or reduced schedules, they would no longer *be* well liked.⁴⁶ In organizations with formal policies, only about three to four percent of lawyers take advantage of them.⁴⁷



Out of 1400 lawyers surveyed, 70% of both men and women reported work/life conflict



1/3 of men, 1/2 of women reported work/life balance as one of their top three reasons for choosing their current employer

Part of the reason involves restrictions on eligibility for reduced schedules. Only 6 percent of surveyed firms allow lawyers at any level or in any area to take part-time status.⁴⁸

A greater problem, however, involves workplace cultures that penalize in practice the options that are available in principle. Research by a broad array of organizations including Catalyst, the National Association for Law Placement, and the Program on Gender, Work, and Family at American University's Washington College of Law consistently finds a "huge gap between what [part-time] policies say on paper and what people feel free to use."⁴⁹ Most lawyers do not believe that their workplaces truly support flexibility or that they could work an alternative schedule without career risks.⁵⁰ In Catalyst's 2001 survey, only a quarter of women attorneys believed that they could use a flexible work arrangement without jeopardizing their prospects for advancement.⁵¹ National surveys of leading law firms recount multiple variations on the same theme: part-time arrangements are "the kiss of death," a "fast track to obscurity," a "professional dead end," and an invitation to end up "permanently out to pasture."⁵²

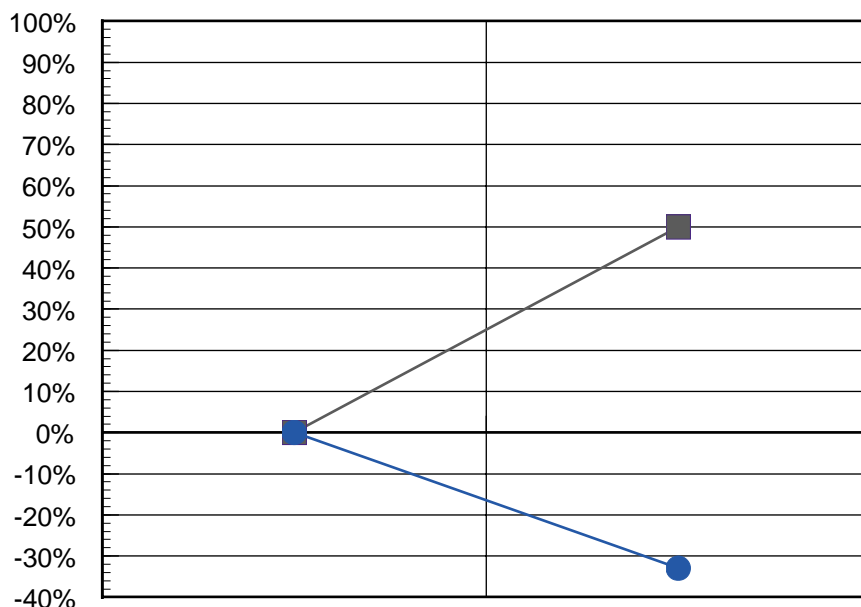
Those predictions are not without basis. Assumptions about the inadequate commitment of attorneys on reduced schedules often influence performance evaluations, work assignments, mentoring relationships, and promotion decisions.⁵³ Although many part-time lawyers report respect and support from colleagues, others recount frustration, isolation, and marginalization.⁵⁴ They feel dismissed and devalued by partners and associates alike. Some are excluded from key committees and high visibility cases. Their hours are not respected by supervisors and their assignments are not given priority by subordinates.⁵⁵ In the Massachusetts Women's Lawyers 2000 survey, one woman summarized common concerns with uncommon candor: part-time status had "completely, utterly and irreversibly altered my future, my practice, my reputation and my relationships."⁵⁶

The problem is compounded by other biases. People are more likely to notice and recall information that confirms their prior assumptions than information that contradicts those assumptions.⁵⁷ When lawyers assume that a working mother is unlikely to be fully committed to her career, they more easily remember the times when she left early than the times when she stayed late. These perceptions can, in turn, prevent women from getting assignments that would demonstrate their capability and commitment, and a cycle of self-fulfilling predictions is established. After maternity leaves, some lawyers receive such routine work that

they are tempted to offer responses like, "look I had a baby not a lobotomy."⁵⁸ Others who take reduced schedules may lack the time for informal socializing that builds collegial support and generates new business.⁵⁹ In some instances, the part-time stigma persists well after the lawyer's status changes. For years after they have returned to full-time schedules, some women report comments such as "oh, you're here today."⁶⁰

Whatever their official policies, many legal employers view the willingness to work long hours as a proxy for harder to measure qualities such as commitment, ambition, and reliability under pressure.⁶¹ The result is a "rat race equilibrium" in which most lawyers feel that they would be better off with shorter or more flexible schedules, but find themselves within institutional structures that resist such alternatives.⁶²

A similar problem arises from the gap between pro bono policies and practices. The American Bar Association's Model Rules of Professional Conduct has established an aspirational standard of 50 hours per year of service, primarily to individuals of limited means or to groups assisting such individuals.⁶³ Yet most lawyers fail to meet this goal. As noted earlier, the average contribution for the profession as a whole is under half an hour a week and, for members of the most profitable firms, only about 8 minutes a day.⁶⁴ The absence of support for pro bono work carries a cost for lawyers personally and professionally. For lawyers individually, involvement in public service can provide valuable training, trial experience, and professional contacts in pursuit of causes to which they feel strongly committed.⁶⁵ For lawyers collectively, pro bono contributions are a way to improve the profession's flagging public reputation.⁶⁶



Over the past decade, while large firm revenues grew by 50%; their average pro bono hours decreased by 1/3

Although bar leaders generally agree in principle, they frequently create reward structures that undermine public service commitments. Support for pro bono work has declined among even those best able to afford it. Fewer than a fifth of the nation's 100 most financially successful firms meet the Model Rules standard of 50 hours a year of pro bono service per lawyer.⁶⁷ Over the past decade, while these firms' revenues grew by over 50 percent, their average pro bono hours decreased by a third. For many other employers, salary wars have pushed compensation levels to new heights, but this affluence has eroded, rather than expanded, support for pro bono programs.⁶⁸ Increased income has often brought increases in billable hour expectations and reductions in the amount of public service that counts toward meeting hourly quotas. As a consequence, many lawyers are less willing to spend scarce free time on substantial charitable work. As one New York associate put it, the choice is "pro bono or go home-o."⁶⁹ For women who carry a disproportionate share of homemaking responsibilities, that choice is particularly problematic.

4. Double Binds and Double Standards: The Special Costs for Women, the Special Obstacles for Men

Issues concerning balanced lives are "women's issues," but they are not only women's issues. Most men also report some dissatisfaction with the tradeoffs between personal and professional commitments. Recent studies find that close relationships with children are as important to fathers' mental and physical well-being as they are to mothers'.⁷⁰ However, one legacy of traditional gender roles is that the costs of workplace structures, and the difficulties of negotiating alternatives, play out somewhat differently for women than for men.

Although the inadequacy of work/family policies carries a cost for all lawyers, women pay a disproportionate price. Most male attorneys have spouses who assume the bulk of family responsibilities; most female attorneys do not. Almost half of women in legal practice are currently unmarried, compared with 15% of men, and few women have partners who are primary caretakers.⁷¹ Despite a significant increase in husbands' assumption of domestic work over the last two decades, wives in dual career couples continue to shoulder the majority of the burden.⁷² Unsurprisingly, women lawyers are significantly more interested in reduced workloads. Close to half of surveyed women, but few men, report wanting such an option.⁷³

For employed women, who still spend about twice as much time on domestic matters as employed men, extended hours result in "double binds and double standards. Working mothers are held to higher standards than working fathers and are often criticized for being insufficiently committed either as parents or as professionals."⁷⁴ Those who seem willing to sacrifice family needs

to workplace demands appear lacking as mothers. Those who want extended leaves or reduced schedules appear lacking as lawyers. Those mixed messages leave many women with high levels of stress, and the uncomfortable sense that, whatever they are doing, they should be doing something else.⁷⁵ "Good mothers" should be home; "good lawyers" should not.

Women's efforts to juggle family needs and professional commitments are playing out to increasingly unattractive extremes. Stories of lawyers closing deals or drafting documents in hospital delivery rooms are disturbingly common.⁷⁶ In the weeks following childbirth, some mothers also encounter constant and pressing needs from colleagues as well as newborns.⁷⁷ This situation does not always improve. In an article misleadingly titled "Women Having It All: They're Mothers and Partners," one lawyer noted with frustration that she has "learned not to make promises to her six year old son that she cannot keep." Her son shares that frustration and has announced that, "When I grow up, I want to be a client."⁷⁸

Women's disproportionate obligations in the home limit their opportunities in the world outside it. Many female lawyers receive "friendly advice" that is virtually never given to their male colleagues: that having children before partnership or having more than one child would be "death to their careers."⁷⁹ Yet women who follow such advice pay a price in other ways. Lawyers who do not have spouses or significant family commitments often have difficulty finding time for relationships that might lead to them. As unmarried associates in a recent law firm survey noted, they end up with a disproportionate amount of work because they have no acceptable reason for refusing it.⁸⁰

Men face similar problems for somewhat different reasons. Workplaces that have been reluctant to accommodate working mothers generally have even more resistance to fathers. The traditional expectation, as one director of law firm professional development put it, was that men with newborn infants would "just go to the hospital, take a look, and come right back to work."⁸¹ Despite the general cultural trend toward more equal parenting roles, those traditional assumptions persist in

Workplace policies that disadvantage men also disadvantage women. By discouraging male attorneys from assuming an equal division of household responsibilities, the policies reinforce gender roles that are separate and by no means equal.

many workplaces. One 1999 survey asked some 1500 CEOs and human resource directors what would be a reasonable amount of time for a man to take off from work following birth or adoption. Almost two-thirds answered “none.”⁸² Recent evidence suggests that the situation is improving for most lawyers. Fathers increasingly feel free to take a few weeks of parental leave, and are no longer routinely given red-eye shifts and out-of-town trials following birth or adoption.⁸³ But neither are adequate policies an accomplished fact. Only about 10 to 15 percent of surveyed law firms and Fortune 1000 companies offer the same paid parental leave to men and women.⁸⁴ Less than five percent of male lawyers take reduced schedules or significant leaves, and those who do so are generally responding to health, not family, needs.⁸⁵ Few fathers feel free to ask for more than a few weeks of paternity leave.⁸⁶ Almost half of surveyed men in law firms think that it would not be acceptable for them to request part-time work, a figure significantly higher than for male employees in other workplace contexts.⁸⁷ However, almost no business or professional setting finds substantial numbers of men taking advantage of family-friendly policies.⁸⁸ Daddy tracks are notable for their absence.

Ironically enough, the expectation that men will remain fully committed to their careers may sometimes give them greater leeway than women in seeking modest adjustments for family needs. In a recent survey of large law firms, several women noted with resentment that when male colleagues wanted time off in the middle of the day for family reasons, they were thought “caring and devoted” or “cute and endearing,” but when women left for similar reasons, they were perceived as unreliable and uncommitted.⁸⁹ However, that special leeway extends only so far. As one male lawyer explained to a Boston Bar Association Task Force, it may be “okay [for men] to say that they would like to spend more time with the kids, but it is not okay to do it, except once in a while.”⁹⁰

Workplace policies that disadvantage men also disad-

vantage women. By discouraging male attorneys from assuming an equal division of household responsibilities, the policies reinforce gender roles that are separate and by no means equal. As long as work/family problems are seen as problems primarily for women, potential solutions may receive inadequate attention in decision-making structures dominated by men.

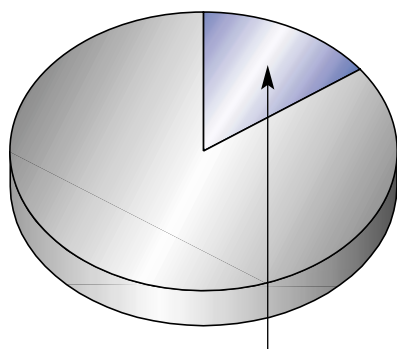
B. The Problems for Legal Employers

Few employers are unaware of the difficulties for lawyers seeking balanced lives. But few have made sufficient responses. The reasons vary somewhat across practice settings.

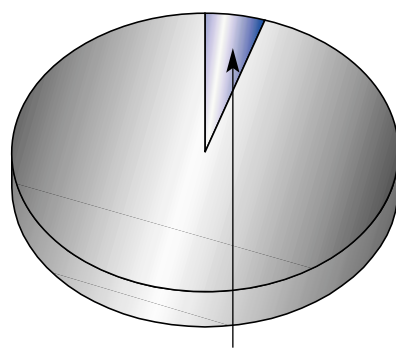
1. Public Sector and Governmental Organizations

Many of the best policies come from the public sector, either from government agencies or from public interest organizations. The explanations are part ideological and part pragmatic. Many of the lawyers drawn to work in these settings tend to be progressive on issues of equal opportunity and family accommodations, and a disproportionate number are women.⁹¹ Moreover, salaries for lawyers in governmental and public interest organizations generally are so much lower than for those with comparable qualifications in private practice that such organizations feel pressure to compete on other dimensions, such as quality of life.⁹² Some agencies also are so “overwhelmed with work” that they face further pressure to retain experienced employees seeking alternative schedule arrangements.⁹³

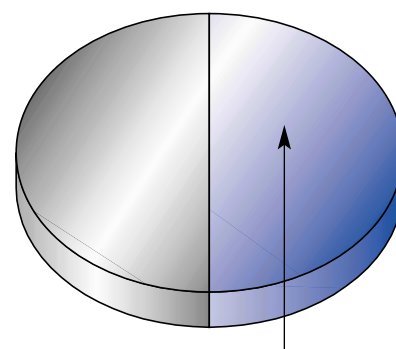
Yet even in public sector/public interest contexts, there is often a gap between formal policies and informal practices.⁹⁴ As in the private sector, extended hours may be viewed as evidence of the total commitment necessary for advancement. This tendency is especially pronounced in organizations that are grossly understaffed and underfinanced. Many governmental and public interest lawyers juggle enormous caseloads with few resources and support personnel.⁹⁵ Those who care



10-15% of law firms and Fortune 1000 companies offer the same paid parental leave to men and women



Less than 5% of male lawyers take reduced schedules/leaves



Almost half of men in law firms think that it is not acceptable to request part-time work

deeply about their clients or causes frequently end up working long hours by necessity, particularly when they are facing well-financed adversaries working extended schedules.

2. Corporate Legal Departments

Related dynamics affect corporate settings. Traditionally, in-house legal departments have attempted to compete for legal talent by offering more regular and manageable schedules than law firms.⁹⁶ In one recent representative survey, three-quarters of corporate counsel indicated that a major reason that they had taken such a position was to gain a healthier balance between their personal and professional lives.⁹⁷ However, many corporations are facing increased pressures to extend hours. In a growing number of companies, downsizing and cost-containment strategies have created economic pressures analogous to those in other public and private sector workplaces, and have compromised lawyers' quality of life.⁹⁸

Although about 60% of surveyed women who work as in-house counsel chose their job primarily for work-life balance, two-thirds report high levels of work-life conflict; only a third are satisfied with telecommuting options; and fewer than 10% believe that they could use a flexible work arrangement without affecting their advancement.⁹⁹ For lawyers who aspire to leadership positions, grueling hours are usually part of the package.¹⁰⁰ A Catalyst study of work/family issues put the point bluntly: "if a woman wants to obtain a top management position, she cannot be the primary custodian of her child."¹⁰¹ Nor, if she lacks a family, can she readily find time for relationships that might lead to one.

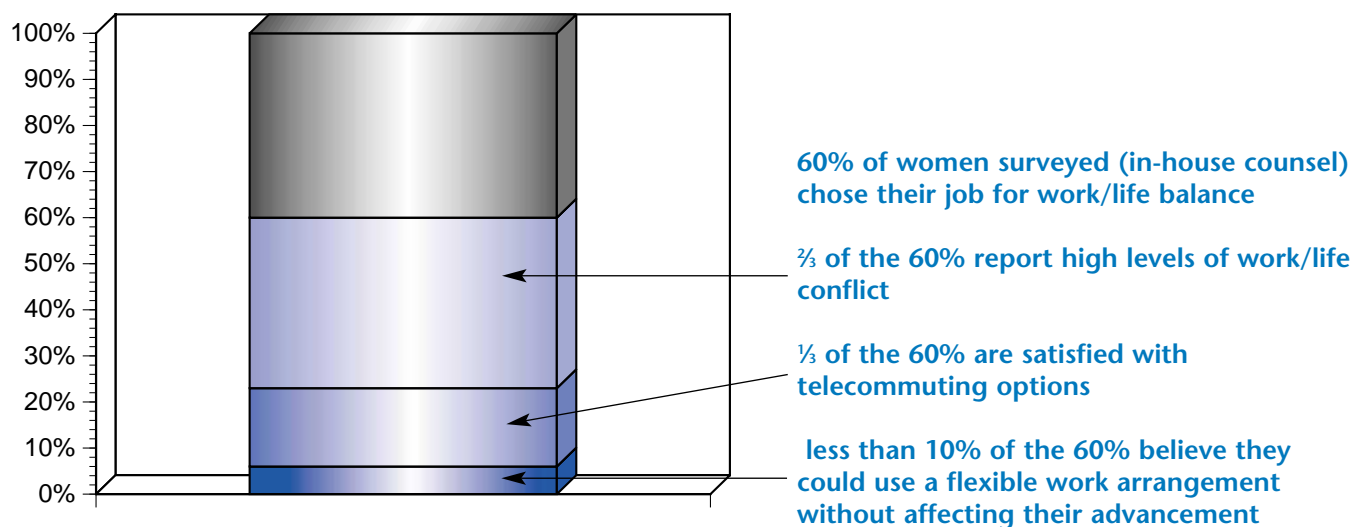
3. Law Firms

In private practice, much of the problem arises from heightened competition within and across professions. Lawyers face greater economic pressures due to substan-

tial increases in the size of the bar, coupled with increasing competition from non-lawyers and in-house counsel, as well as increasing competition for talented law graduates and successful experienced practitioners.¹⁰² Particularly in large and mid-sized firms, salary wars have exacerbated economic pressures.¹⁰³ Such pressures have, in turn, placed a premium on maximizing billable hours and on developing new business. These priorities disadvantage lawyers with significant family responsibilities, pro bono obligations, or other important commitments.

Competition has also increased within law firms. Partnership means less and is harder to obtain. Fewer attorneys gain full equity status, and even those who do cannot always count on lifetime tenure. At junior levels, where the likelihood of promotion has diminished, rivalry among associates has intensified, and hours have become a primary focus of competition.¹⁰⁴ At senior levels, partners with high billable hours and revenue production generally have the greatest income and influence, and lawyers with substantial competing responsibilities often end up with second-class status.¹⁰⁵ As working relations become more competitive and more transient, fewer lawyers have a stake in caring about the quality of life for colleagues.

Competition for clients has had some equally adverse effects. Total availability is part of the package that firms market, and the risk of client resistance to inaccessible lawyers working alternative schedules is a common and legitimate concern.¹⁰⁶ Yet experience suggests that such risks are often overstated, and that client pressures cannot account for the routinely overloaded schedules typical of many firms. Clients do not benefit when bleary, burned-out lawyers are unable to provide the most cost-effective services, or are tempted to expand work to fit the hours expected.¹⁰⁷ Moreover, the high turnover that punishing schedules encourage is costly to clients who have to pay directly or indirectly for reeducating replacements.



Experience in many private sector contexts makes clear that quality service can be provided under more reasonable conditions. Many organizations make effective use of additional part-time staff, job sharing, or backup arrangements for emergency needs. Few clients are fully aware of or especially concerned about how much “face time” any particular lawyer puts in at the office.¹⁰⁸ Rarely do they just “drop by whenever they are in the neighborhood.”¹⁰⁹ From most clients’ perspective, as long as attorneys provide timely assistance and are accessible for scheduled meetings and for telephone or electronic consultations, it hardly matters whether they are on flexible or reduced schedules. In fact, lawyers may be more available to answer calls from home or a playground than their colleagues who are at a deposition for another case.¹¹⁰

Employers have an obvious self-interest in addressing both the glass ceilings and maternal walls that work against retention. It generally costs at least 150% of a worker’s annual salary to recruit and train a replacement.

One of the few efforts to monitor client satisfaction with part-time attorneys found no adverse effects.¹¹¹

For many lawyers, the primary barriers to balanced lives have less to do with client demands than with law firm economics. A central difficulty is that the predominant hourly billing system pegs profits more to the quantity of time spent than to the efficiency of its use, and profits have become an increasingly dominant concern. A related problem involves escalating compensation packages. Competition for the ablest junior associates has pushed salaries well above what hourly billing rates justify. Because firms are under other com-

petitive pressures not to raise those rates, the choice has been to decrease partner profits, to raise lawyers’ work loads, or to lose the bidding war for talented younger lawyers. All of these solutions are problematic.

From associates’ perspective, the desire for high salaries is understandable. Most leave law school with high debt burdens and little, if any, experience of what life is like when billing above 2000 hours on a sustained basis. Many entering associates do not yet have demanding family commitments, and the allure of creature comforts after years of genteel poverty often seems irresistible. In their view, the way for employers to avoid unmanageable workloads is to reduce income for senior, not subordinate, lawyers.

The difficulty, of course, is that if firms follow this strategy and allow incomes to fall below market rates,

they run the same risks of defection at the upper level that they do at the junior level. Profitable partners who feel undercompensated have become increasingly willing to move, often taking clients and talented colleagues with them. Many firm leaders worry that if they become too permissive, they will end up with a flood of requests for reduced hours, and a disproportionate share of “slackers.”¹¹² The result is that lawyers often end up with workloads that they find excessive in practice settings that offer no adequate alternatives. As discussion below suggests, that result is costly for all concerned.

Failure to provide adequate support for pro bono work carries other costs. Many law firms with heavy billable hour requirements fail to credit pro bono work fully toward meeting those requirements or to value it in promotion and compensation decisions.¹¹³ The result is to discourage public service that could provide valuable trial or transactional experience, community visibility, client contacts, and deep moral satisfaction. Firms as well as their members pay a price for these lost opportunities, but the loss is not easy to calculate by lawyers who have never engaged in significant pro bono work. Practitioners who do not fully appreciate what they are missing are unlikely to demand the structural reforms necessary to provide it.

C. The Price of Current Policies

Workplaces that fail to foster balanced lives are losing out on multiple levels. One involves the costs associated with high attrition of qualified lawyers. The problem is especially pronounced in law firms. As bar association studies and management consultants consistently note, most associates do not begin to generate profits until their third or fourth years. At that point, almost half have left their first employer.¹¹⁴ Departure rates are particularly high for women working part-time, and for reasons that are often self-perpetuating. Many women on alternative schedules feel unsupported by colleagues, which increases their attrition. Many colleagues who expect such attrition are reluctant to invest the support and mentoring that might prevent it.¹¹⁵ In one recent study by the Massachusetts Women’s Bar Association, women working reduced schedules left firms at a rate 70 percent higher than full-time male colleagues.¹¹⁶

However, contrary to popular assumptions, these women typically do not end up as full-time homemakers. Women are not significantly more likely to leave their legal careers than men.¹¹⁷ Moreover, in the most recent comprehensive study, by the National Association for Law Placement (NALP), less than 4% of lawyers leaving firms did so to pursue full-time family or community responsibilities.¹¹⁸ Rather, they move to more accommodating workplaces. The firms that lose such women, and live with high turnover rates, are paying a price in disrupted client and collegial relationships, as well as in

recruitment and retraining expenses. Joan Williams, Professor of Law and Director of the Gender, Work, and Family Project at American University, notes that “smart law firms are beginning to recognize that it makes no sense to spend a fortune wooing, training, and then driving out young associates. Employers have an obvious self-interest in addressing both the glass ceilings and maternal walls that work against retention.”¹¹⁹ It generally costs at least 150% of a worker’s annual salary to recruit and train a replacement.¹²⁰ Flexible workplace structures are a crucial strategy for reducing such attrition-related expenses. In the NALP 2000 survey, the characteristic correlated with the lowest rate of associate turnover was the availability of alternative work schedules.¹²¹

Employers that fail to support alternative work arrangements also are missing opportunities to increase health, morale, and productivity. A wide array of research indicates that part-time employees are more efficient than their full-time counterparts, particularly those with oppressive schedules.¹²² Alternative work arrangements can also help reduce lawyers’ disproportionate risks of stress, substance abuse, and other health-related disorders.¹²³ Use of part-time or contract lawyers who share office space and offer expertise in specialized areas has additional advantages. Such arrangements often enable organizations to reduce overhead expenses and provide coverage in areas that cannot sustain a full-time employee.¹²⁴

Employers that discount such benefits and equate

reduced schedules with reduced commitment have a shortsighted view. In fact, it takes exceptional dedication for women to juggle competing work and family responsibilities in unsupportive working environments. As one lawyer told a Boston Bar Association task force: “On most days I am taking care of children or commuting or working from the moment I get up until I fall in bed at night. No one would choose this if they weren’t very committed.”¹²⁵ So too, a growing body of research indicates that employees in workplaces that effectively accommodate family needs feel greater satisfaction and commitment to the organization, and are far less likely to pursue other options.¹²⁶ In several recent studies, flexible schedules have been the most effective retention tool, outperforming even salary increases at above market levels.¹²⁷ Employers that have systematically assessed job performance and attrition-related expenses have generally found a strong economic justification for family-friendly policies. Estimates by Work-Family Directions suggest that every dollar invested in such policies results in two dollars saved in other costs.¹²⁸

Greater responsiveness to family needs can also enhance employers’ reputation and minimize risks of sex-discrimination claims.¹²⁹ At a time when women constitute half the pool of potential new recruits, and control a substantial share of client business, organizations will benefit from workplace policies that promote equal opportunity.

III. STRATEGIES FOR CHANGE

A. Guiding Principles

There are no single or simple solutions to the challenges of fostering balanced lives in an increasingly diverse and competitive legal market. Lawyers vary considerably in personal priorities, needs, and practice settings. But all lawyers, whatever their individual circumstances, have a common stake in finding effective ways to accommodate personal and professional commitments.

Promising proposals are not in short supply. This Commission's review of policies and proposals by legal employers, bar associations, and experts in the field has identified a range of best practices concerning quality of life. They include issues such as flexible, compressed, or reduced schedules, telecommuting, short-term leave, childcare and eldercare assistance, and pro bono work.¹³⁰ Although the details of effective policies will vary across organizations, the guiding principles are mutual commitment, flexibility, and accountability.¹³¹

As a threshold matter, both the individual and the institution have to be committed to arrangements that will work effectively for all concerned. That, in turn, will require an appropriate balance between formalized policies and individualized adjustments. Legal employers need to provide some degree of consistency and predictability in their treatment of employee needs, but they also need flexibility in adapting to each lawyer's particular circumstances. One size will not fit all. Yet neither will entirely ad hoc arrangements, unconstrained by written policies, assure even-handed treatment of similar cases and prevent charges of favoritism or discrimination.

Appropriate policies also must balance respect for individuals' alternative working arrangements and responsiveness to unavoidable workplace needs. Lawyers must make sure that such arrangements work for clients and colleagues. Employers must make sure that such arrangements work for lawyers. When unanticipated demands arise that cannot be met in some other reasonable fashion, attorneys on leave or alternative schedules should make every effort to provide assistance. Their colleagues should, in turn, avoid taking undue advantage of that flexibility, and should prevent unpredictable crises from becoming predictable occurrences. "Reasonable accommodation" on both sides is the key.¹³²

It is, however, not enough to establish liberal policies involving quality of life. Employers also need to monitor their effectiveness and to impose accountability for the results. Appropriate education, training, and evaluation practices should be key priorities. If few women and almost no men feel able to use part-time policies,

employers need to address the reasons. Also, if few lawyers are meeting the ABA goal of 50 hours a year of pro bono work, employers need to revise the reward structures that prevent it.

By the same token, individual lawyers need to take responsibility, personally and collectively, for insisting on changes that will foster balanced lives. Bar associations need to assist that process by providing information, resources, and recognition for effective practices. In the long run, the changing needs and priorities of today's profession invite a fundamental rethinking of organizational structures. Truly effective approaches will require not only individual accommodations but also institutional transformations. The challenges in promoting balanced lives are opportunities for cost-effective innovations in the way that lawyers allocate work, bill for services, reward performance, and structure workplace relationships.¹³³

B. Employer Strategies

The most important strategy for legal employers in promoting balanced lives is for their leaders to demonstrate commitment in practice as well as in principle.¹³⁴ Management can show support in two primary ways: by providing information, benefits, and services, and by fostering appropriate practices concerning workplace leaves, alternative schedules, and pro bono work.

1. Information, Benefits, and Services

Increasing competition for legal talent, coupled with increasing concern about lawyers' quality of life, has encouraged employers to offer an increasing range of assistance. Common forms of support include:

- services designed to meet the basic needs of employees working extended hours (e.g., onsite childcare facilities, off-site childcare subsidies, emergency backup childcare, free meals, laundry services);
 - benefits designed to improve health and morale and to reduce job-related stress (e.g., sabbaticals, athletic facilities or club memberships, family-related functions, recreational outings, and tickets to sports or cultural events);
 - information and counseling services designed to address family needs (e.g., referrals concerning child care, after-school programs, eldercare, parental education programs, and support groups);
 - pretax spending accounts for child-care expenses.¹³⁵
- These initiatives obviously vary considerably in expense, and insufficient data is available to gauge their

relative cost-effectiveness in terms of employee satisfaction, health, recruitment, and retention. However, even in the absence of such data, it is possible to identify some best practices in structuring employee assistance programs.

First, legal employers need appropriate procedures and criteria for developing benefit packages. Recommendations and evaluations should come from the broadest group of employees possible. However, the stated preferences of current employees are not the only relevant considerations. The kinds of assistance available both affect and express organizational culture. In conjunction with other factors, employee benefits may influence job performance, advancement, retention, and recruitment.

Some of these influences are likely to vary by gender. For example, tickets to certain types of sporting events may encourage all-male social activities, which add to women's sense of marginalization and exacerbate their difficulties in building collegial support and client relationships.¹³⁶ By contrast, childcare assistance can make a substantial difference for attorneys who assume primary family responsibilities, a group that is disproportionately female. Employers that operate on-site facilities for full-time or emergency childcare assistance, or that contract for such coverage, have noted positive effects on recruitment and retention, as well as reductions in unplanned absences.¹³⁷ Parents working extended hours benefit from opportunities to see their children during the day and from access to dependable, quality care when other arrangements fall through. Employers benefit from the recognition for "family friendly" workplaces provided by media and professional associations.¹³⁸

2. Pro Bono Policies

Organizations that are truly committed to pro bono service need to translate their principles into formal policies and reward structures. Expectations about lawyer involvement should be explicit, and assistance in identifying appropriate work should be available. Pro bono service should be counted fully toward billable hour targets, and should be valued positively in compensation and promotion decisions. Appropriate levels of support and supervision should be provided, along with opportunities to work part-time in public interest organizations.¹³⁹ Exceptional contributions should be showcased in organizational events and publications. The point of all these strategies is to ensure that every lawyer is able to find rewarding and rewarded opportunities for public service.

3. Alternative Work Arrangements and Family Leaves

With respect to leave arrangements and alternative or reduced work schedules, the chart at pp. 46–49 compares the features of recent model policies. As it indicates, some details vary across organizations, but certain common principles and best practices are also apparent.

Procedures for Drafting, Implementing, and Evaluating Policies First, employers should formalize and evaluate their approaches. Written policies should reflect actual practices, and employers should monitor implementation to insure that options available in theory are not foreclosed in fact by unsympathetic supervisors and informal reward structures.

It is generally useful to have a special committee with responsibility for drafting, revising, and monitoring professional personnel policies. The membership should be diverse and should represent lawyers of different status, age, and background. Ideally, the committee should include, or seek perspectives from, individuals with different family circumstances and with expertise in relevant employment laws. Most importantly, the members should be individuals who are widely respected in the organization, who appreciate the seriousness of the issues to be addressed, who can assist in communicating their importance, and who can add credibility to the process.

As a preliminary matter, committee members should consult with individuals in and outside of the organization who have dealt with these issues previously, as well as those who are likely to be affected by the policies adopted or revised. Employee surveys and advice from management consultants can often be helpful. Once the committee has formulated recommendations, they should be circulated for comment. After policies are adopted or revised, they should be disseminated to all lawyers, and should be included in training programs, handbooks, and other informational materials.

This committee or some other appropriate body should periodically review the policies. The goal of these reviews should be to determine whether the policies have been fairly implemented and are consistent with the needs of the organization, its clients, and its lawyers. Appropriate benchmarks should include the number and status of employees using the policies, the satisfaction of those involved, and the perceptions of clients and other lawyers about the suitability of the policies, and the career consequences of using them.

Any adequate evaluation system will also require some institutionalized mechanisms of accountability. Employees at all levels need regular opportunities and reporting channels to express concerns. Alternative schedule advisors, coordinators, or committees with

The most important strategy for legal employers in promoting balanced lives is for their leaders to demonstrate commitment in practice as well as in principle.

responsibility for monitoring alternative work arrangements and other quality-of-life issues are often necessary but not sufficient.¹⁴⁰ Organizations also need to ensure that adequate performance on these dimensions is part of their business planning and personnel review processes. Benchmarks should be established concerning rates of usage and satisfaction. Evaluation procedures should include opportunities for subordinate attorneys to raise concerns about their supervisors' practices regarding balanced lives.¹⁴¹ The results of such bottom-up reviews of supervising attorneys should be taken into consideration in promotion and compensation decisions.

Eligibility

Opportunities for alternative working arrangements should be as broadly available as possible. Lawyers at all levels should be eligible to request a reduced schedule or a short-term leave for any legitimate reason. In evaluating such requests, employers should consider the needs of clients and other staff, but should make every effort

Desires for balanced lives are not unique to women with children, and alternative schedules are less likely to be stigmatized if they are not used exclusively by mothers.

to accommodate reasonable requests. Where organizations provide paid parental leaves beyond the period of medical disability resulting from childbirth, men should be entitled to coverage on the same terms as women. Giving mothers special benefits or limiting part-time status to primary caretakers will reinforce gender stereotypes and encourage pink-collar ghettos. Restricting eligibility for alternative schedules to particular groups, such as mothers or "superstars," may breed collegial resentment.¹⁴² Desires for balanced lives are not unique to women with

children, and alternative schedules are less likely to be stigmatized if they are not used exclusively by mothers.

Employers as well as employees may benefit from the improved morale and broadened perspective that professionals with other commitments bring to their practice. A similar observation was once made by the manager of a bank where T.S. Eliot worked while writing poetry on the side. When some coworkers suggested that a banker had "no business whatever to be a poet," the supervisor responded that "anything a man does . . . if he is really keen on it and does it well . . . helps him with his work." Without apparent irony, he added, "I don't see why 'in time, of course, in time' [Eliot] mightn't even become a Branch Manager."¹⁴³

Employers, of course, have legitimate concerns about

manageability if, as they often worry, many lawyers would want reduced schedules that did not carry career risks. But organizations offering unrestricted eligibility have not reported such problems.¹⁴⁴ Nor is it clear how popular part-time options would be even if their adverse career consequences could be removed. Except for relatively short parts of their careers, most professionals appear reluctant to sacrifice the income, structure, and relationships that come with full-time work.¹⁴⁵ In any case, if it turns out that many attorneys would opt for some reduction of hours coupled with a corresponding reduction in income, then organizations offering such an alternative may realize substantial gains in efficiency, morale, and recruitment.¹⁴⁶

Terms and Conditions

There is no single model for what works best. Lawyers have different needs at different stages in their career, depending on their family circumstances, practice specialties, and workplace demands. For example, some attorneys with alternative schedules function most effectively with reduced hours each day or set days off each week. Other lawyers do better by staggering periods of intense work with more extended time away from the office.

Whatever the arrangement, compensation and benefits for part-time work generally should be calculated on a pro rata basis.¹⁴⁷ Compensable time should include a reasonable number of nonbillable hours that can be allocated to administration, continuing legal education, and similar matters. If attorneys end up with substantial periods of "schedule creep," in which they work significantly more hours than anticipated, the time should be banked and should result in additional compensation or time off. Such adjustments are essential to prevent lawyers who seek to demonstrate their commitment and accessibility from ending up with part-time status but full-time work. Attorneys on alternative schedules are much more likely to feel fairly treated and to pitch in beyond their scheduled hours if they are compensated accordingly.¹⁴⁸

Employers also need to insure that women who seek temporary accommodations do not pay a permanent price, or that their colleagues are not saddled with unmanageable extra loads. As a National Association for Law Placement survey put it, "up or out should be dead and gone."¹⁴⁹ Attorneys who work alternative or reduced schedules should be eligible for partnership, if not while working such schedules, then within a reasonable time after resuming full-time status. Employers should ensure that additional staff are available to cover work that requires reallocation when an attorney goes on leave or takes part-time status.

Future Planning

Over the next decades, employers will face growing pressure to address the quality of lawyers' working lives. Increases in competition, technological innovation, and women's representation in the profession will bring new

urgency to long-standing concerns. To prosper in this environment, employers must treat issues concerning balanced lives not as special accommodations for some small group, but as central priorities for their entire workforce.

C. Individual Strategies

What works for individual lawyers obviously depends on their particular practice specialties, workplace cultures, and family situations. However, the research reviewed for this Manual also identifies certain best practices that can assist employees in structuring their careers.

- Set realistic goals and priorities and look for a work setting that will support those objectives.
- Before accepting a position, find out as much as possible about an employer's formal policies and informal practices concerning balanced lives.
- Pick a manageable and marketable specialty.
- Cultivate mentoring relationships.
- Develop a track record of effective performance before requesting an extended leave or alternative schedule.
- Seek information from bar associations, consultants, and other employees with alternative work arrangements in designing a personal plan.
- Formalize and periodically reevaluate the arrangement.
- Demonstrate flexibility and commitment.
- Do not make unreasonable demands, but do not settle for unreasonable responses.
- If your initial request or arrangement is unsuccessful, try to develop a constructive alternative.
- Manage time efficiently and make sure your schedule reflects your priorities.
- Secure adequate support; obtain as much assistance as you can from family, friends, and household employees or services.

- Make time to participate in at least some workplace social events, professional meetings, and business development activities.
- Join or help develop a support network.
- Take charge of your career and do not allow short-term needs to preempt long-term objectives.¹⁵⁰

Most important, lawyers must press for whatever institutional changes are necessary to make their work lives work for them. In the long run, both their own and the profession's interests will best be served by insisting on opportunities to balance commitments to clients, colleagues, family, and public service.

D. Bar Associations

State, local, and national bar associations can support balanced-lives initiatives in several ways. One is to follow the lead of organizations cited in this Manual that have established committees, conducted surveys, issued reports, drafted model policies, or endorsed this Commission's recommended policies. Another possibility is to establish or collaborate with a network of lawyers who have alternative work arrangements. Such support groups can assist individual members and legal employers by providing information, sponsoring programs, and advocating best practices.

A related strategy is for bar organizations to seek endorsements of model policies or best practices from legal employers and major corporate clients. Such approaches have had some success in building support for alternative work policies, and related campaigns have brought progress on diversity and pro bono issues.¹⁵¹ Bar associations can also have a positive impact through special awards for legal employers that demonstrate outstanding commitment to balanced lives and public service.¹⁵²

IV. CONCLUSION

At the turn of the last century, Leila Robinson, Massachusetts' first woman lawyer, advised her colleagues: "Do not take sex into practice. Don't be 'lady lawyers.' Simply be lawyers and recognize no distinction between yourselves and the other members of the bar." Thousands of female attorneys have followed that advice. But they have often paid a substantial price. Women lawyers today are increasingly unwilling to ignore the gender-related distinctions that affect their careers. Attorneys of both sexes are seeking a balance between their personal and professional lives that eluded earlier generations. Although concerns about work and family balance are particularly important to women, they are not only "women's issues." In an increasingly competitive legal environment,

employers that want to attract well-qualified lawyers of both sexes must create a workplace that supports them.

A recent *ABA Journal* survey points up the changes in professional culture that have occurred since Leila Robinson offered her advice. A majority of today's lawyers view the increase in women lawyers, and their willingness to bring "sex into practice," as a positive development for the profession. Both male and female attorneys generally agree that women's greater representation in the bar will promote a better balance between work and family, more flexible work arrangements, and a higher quality of service.¹⁵³ Those changes are underway, but full progress will require a sustained commitment throughout the profession.

ENDNOTES

1. Boston Bar Association Task Force on Professional Fulfillment, Expectations, Realities, and Recommendations for Change (1997). See also Carrie Menkel-Meadow, "Culture Clash in the Quality of Life in the Law: Changes in the Economics, Diversification, and Organization of Lawyering," 44 Case W. Res. L. Rev. 621 (1994).
2. Robinson, quoted in Boston Bar Association Task Force on Work/Family Challenges, Facing the Grail: Confronting the Cost of Work-Family Imbalance 5.
3. Terry Carter, "Paths Need Paving," ABA J, Sept. 2000, at 35.
4. Virginia G. Drachman, Sisters in Law: Women Lawyers in Modern American History (1998).
5. Mona Harrington, Care and Equality: Inventing a New Family Politics 12-13, 36-39, 58-59 (1999); National Alliance for Caregiving, Family Caregiving in the U.S.: Findings from a National Survey (1997); Amy Joyce, "Elder Care Experts Fill Timely Need," Wash. Post, Sept. 20, 2000, at B5.
6. Juliet B. Schor, The Overworked American: The Unexpected Decline of Leisure 1-5, 79-82 (1993).
7. See sources cited in Deborah L. Rhode, In the Interests of Justice 10 (2000).
8. Cameron Stracher, "Show Me the Misery," Wall St. J., March 6, 2000, at A31.
9. Cynthia Fuchs Epstein, Carroll Seron, Bonnie Oglensky, and Robert Saute, The Part-Time Paradox: Time Norms, Professional Lives, Family, and Gender 5 (1999); Wendy R. Liebowitz, "Technology and Telecommuting: Is Home Just Another Extension?," Nat'l L. J., June 16, 1997, at B11; Rhode, *supra* note 7, at 29; Carol Hymowitz and Rachel Emma Silverman, "Stressed Out: Can Workplace Stress Get Worse?," Wall St. J., Jan. 16, 2001, at B1.
10. Rhode, In the Interests of Justice, *supra* note 7, at 10; Carl T. Bogus, "The Death Of An Honorable Profession," 71 Ind. L. Rev. 911, 926 (1996).
11. Catalyst, Women in Law: Making the Case, Executive Summary 9 (2001).
12. In 2000, 33% of women believed that the successful combination of roles was unrealistic, compared with 13% in 1983. Carter, *supra* note 3, at 35.
13. About a quarter of lawyers were dissatisfied, and about half were somewhat satisfied. Only a fifth disagreed that they spent too much time on work. ABA Young Lawyers Division, Career Satisfaction Survey, Table 20 (2000).
14. *Id.*, Table 23; American Bar Association, Young Lawyers' Division, Career Satisfaction Survey 10-11 (1995).
15. Suzanne Nossel and Elizabeth Westfall, Presumed Equal: What America's Top Women Lawyers Really Think About their Firms (2d ed. 1998), 168; see also *id.* at 3, 14, 59, 71, 180-181, 194, 199, 255, 358, 362, 366, 375. Hope Viner Samborn, "Higher Hurdles for Women," ABA J., Sept. 2000, at 35 (finding that 46% of surveyed women believed that taking a leave or part-time status after becoming a parent would be very likely to have an adverse effect on advancement and another 35% thought it was somewhat likely).
16. See figures compiled by the National Association for Law Placement (NALP) for over a thousand law firms, discussed in Martha Neil, "Lawyers Shun Firms' Offers of Part-Time Work," Chi. L. Bull., Dec. 18, 2000, at 1; Epstein et al., *supra* note 9, at 5; Abbie F. Willard and Paula B. Patton, National Association for Law Placement Foundation, Perceptions of Partnership: The Allure and Accessibility of the Brass Ring 99 (1999). See also Catalyst, A New Approach to Flexibility: Managing the Work Time Equation 16, 25-27 (1997); Catalyst, Flexible Work Arrangements III 27 (2000).
17. Rhode, "Access to Justice," 69 Fordham L. Rev. 101 (2001).
18. An estimated one-third of American attorneys suffer from depression or from alcohol or drug addiction, a rate two-to-three times higher than the population generally. See sources cited in Rhode, *supra* note 7, at 8. Almost half of women lawyers, and almost two-thirds of those working more than 45 hours a week, report that such stress levels have adverse effects on reproductive health. Marc B. Schenker, et al., "Self Reported Stress and Reproductive Health of Female Lawyers," 39 Occupational & Envtl. Med. 556 (1997). See also Mary Beth Grover, "Daddy Stress," Forbes, Sept. 6, 1999, at 202. What limited research is available finds that women report higher levels of anxiety, depression, and other stress-related disorders. See John Sonsteng, "Attorney Satisfaction High in Minnesota," Bench & B. Minn., Dec. 2000, at 31.
19. NALP Foundation, Keeping the Keepers: Strategies for Associate Retention in Times of Attrition 53-57 (1998); Debra Baker, "Cash-and-Carry Associates," ABA J., May 1999, at 40.
20. Joan Williams, Unbending Gender: Why Family and Work Conflict and What to Do About It, 71-73 (2000); Boston Bar Association, *supra* note 2, at 39; Catalyst, A New Approach to Flexibility, *supra* note 16, at 20-21; NALP Foundation, Beyond the Bidding War: A Study of Attrition, Departures, Destinations, and Workload Initiatives (2001).
21. ABA Young Lawyers' Division, *supra* note 13; ABA Young Lawyers' Division, *supra* note 14.
22. Deborah L. Rhode, "Cultures of Commitment: Pro Bono for Lawyers and Law Students," 67 Fordham L. Rev. 2415 (1999).
23. See MN Self Audit for Gender Equity (June 1999); Dana Casale, "Area Firms Share Sexual Harassment and Anti-Discrimination Policies," Lawyers J. June 30, 2000, at 4.
24. ABA Commission on Women in the Profession, The Unfinished Agenda: Women and the Legal Profession 23-25 (2001); Catalyst, *supra* note 11; Life, Law, and the Pursuit of Balance: Lawyers' Guide to the Quality of Life (Jeffrey R. Simmons ed., 2nd ed. 1997) (describing bar survey finding that excessive hours were greatest issue for lawyers in large firms and second greatest issue for lawyers in small firms and solo practice); Carroll Seron, The Business of Practicing Law: The Work Lives of Solo and Small-Firm Attorneys 107, 124 (1996); Terry Carter, *supra* note 3, at 37.
25. By the late 1990s, the average American family worked 15 hours more a week than it did in the late 1960s. John Leland, "To Loaf or Not to Loaf," N.Y. Times Mag., Dec. 17, 2000, at 25. See Schor, *supra* note 6; Arlie Russell Hochschild, The Time Bind: When Work Becomes Home and Home Becomes Work (1997).
26. See notes 7 and 8 *supra*.
27. Women's Bar Association of Massachusetts, More than Part-Time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment and Success of Women Attorneys in Law Firms 10 (2000).
28. Edward Fennell, "The Lure of the Yankee Dollar," London Times, July 18, 2000, at 13 (quoting Andrew Wilkinson, the managing partner of Cadwalder, Wickersham & Taft's London office).
29. Cynthia Fuchs Epstein et al., "Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession," 46 Fordham L. Rev. 291, 385 (1995).
30. Nossel and Westfall, *supra* note 15, at 295.
31. Jim Oliphant, "Why, Even Now, Do So Few Women Become Law Firm Partners?," Broward Daily Bus. Rev., March 6, 1998, at 8.
32. Nossel and Westfall, *supra* note 15, at 21, 24, 261, 277; "Partner Compensation: Splitting the Take," Ill. Legal Times, Feb. 1995, at 1.

33. Deborah Arron, "Connection Gaps," ABA J., Oct. 1999, at 60. See "Partner Compensation," *supra* note 32, at 1; Liebowitz, *supra* note 9, at B11; Epstein et al., *supra* note 9, at 24.

34. David Okrent, "Get Me Boies," Time, Dec. 25, 2000, at 104.

35. Nossel and Westfall, *supra* note 15, at 68, 138-39, 160; Epstein et al., *supra* note 29, at 387-391, 394, 399; Report of the New York Task Force on Lawyers' Quality of Life (2000); Women's Bar Association of Massachusetts, *supra* note 2.

36. Arron, *supra* note 33, at 60.

37. ABA Commission on Women in the Profession, *supra* note 24, at 19; National Association for Law Placement, Recruiting, Hiring and Retaining Gay, Lesbian, Bisexual, and Transgender Attorneys (1998); William B. Rubenstein, "Queer Studies II: Some Reflections on the Study of Sexual Orientation Bias in the Legal Profession," 8 UCLA Women's L. J. 379, 398 (1998).

38. Report from the Commission's Subcommittee on Lawyers with Disabilities, "Networking Forum," California Bar Subcommittee, Survey of Attorneys and Judges With Disabilities; Pamela Coyle, "What Sylvia Law, Jonathan Pazer and David Glass Confront When They Read or Write," ABA J. Sept. 1996, at 64.

39. Marilyn Tucker, "Will Women Lawyers Ever Be Happy?," Law Practice Management, Jan./Feb. 1998, at 47. See also Epstein et al., *supra* note 9, at 34 (quoting advice: "If you want to be a lawyer, be a lawyer. If you want to be a mother, be a mother"); Catalyst, Flexible Work Arrangements, *supra* note 16 (quoting observation that "There are good 'ole boys born every day. There are still a lot of them that think we [working moms] belong at home").

40. Nossel and Westfall, *supra* note 15, at 126; Epstein et al., *supra* note 29, at 409. See also Nossel and Westfall, *supra* note 15, at 9, 44, 102, 187, 251, 266, 277, 297; Mona Harrington, Women Lawyers: Rewriting the Rules 87 (1994); Amy Saltman, "Women vs Women," U.S. News and World Report On Line, March 25, 1996; Amy Bach, "Nolo Contendre," N.Y. Magazine, Dec. 11, 1995, at 54; Jim Oliphant, "X-ing Out Tradition," Broward Daily Bus. Rev., Dec. 18, 1998 at 16; Laraine T. Zappart, Getting It Right 145 (2001).

41. The Family and Work Institutes' National Study of the Changing Workplace, involving some 2800 workers, found that workplace flexibility and family support was the second most significant factor in job satisfaction, after job quality. Nearly two-thirds of all workers would reduce their work week by an average of 10 hours. Steven Ginsberg, "Raising Corporate Profits by Reaching Out to Families," Wash. Post, April 19, 1998; Sue Shellenbarger, "Study of U.S. Workers Finds Sharp Rise Since 1992 in Desire to Reduce Hours," Wall St. J., April 15, 1998, at A10. For discussion of the generational shift in priorities within law and accounting firms as young men as well as women express greater desire for time with their families, see Douglas McCracken, "Winning the Talent War for Women," Harv. Bus. Rev. Nov.-Dec. 2000, at 159, 161; Bruce Balestier, "'Mommy Track' No Career Derailment," N.Y. Law J., June 9, 2000, at 24; Terry Carter, "Your Time or Your Money," ABA J., Feb. 2001, at 26. One survey by Harris Interactive and the Radcliffe Public Policy Center found that almost three quarters of men in their middle thirties, compared to only a quarter of men over 65, would be willing to take lower salaries in exchange for more time available for their family. Kirsten Downey Grimsley, "Family A Priority for Young Workers: Survey Finds Changes in Men's Thinking," Wash. Post, May 3, 2000, at E1. See generally Bruce Tulgan, The Manager's Pocket Guide to Generation X (1997).

42. Catalyst, *supra* note 11, at 10.

43. Nossel and Westfall, *supra* note 15, at 250, 393; Williams, *supra* note 20, at 146-51; Harrington, *supra* note 40, at 31, 38.

44. Sue Shellenbarger, "Work and Family: What Job Candidates Really Want to Know," Wall St. J., Nov. 17, 1999, at B1.

45. Radcliffe Public Policy Center, Life's Work: Generational Attitudes Toward Work and Life Integration 3 (2000).

46. Harrington, *supra* note 40, at 33.

47. See note 16 *supra*.

48. Neil, *supra* note 16, at 22.

49. Jill Schachner Chanen, "Daddy's Home," ABA J., Nov. 2000, at 90 (quoting Williams).

50. At Nossel and Westfall, *supra* note 15, at 168; see also id. 3, 14, 59, 71, 180-81, 194, 199, 255, 358, 362, 366, 375; Samborn, *supra* note 15, at 35; Michael D. Goldhaber, "'Part-Time Never Works' Discuss," Nat'l L. J., Dec. 4, 2000, at A31 (finding that 44% of surveyed associates agree that part-time is underutilized because it "never works"); Women's Bar Association of Massachusetts, *supra* note 27, at 41; Jeff Blumenthal, "Part-Time Attorneys: You're Not Alone," Legal Intelligencer, January 24, 2000, at 3.

51. Catalyst, *supra* note 11, at 10.

52. Nossel and Westfall, *supra* note 15, at 14, 255, 371. See Harrington, *supra* note 40, at 33; Goldhaber, *supra* note 50, at 31; Women's Bar Association of Massachusetts, *supra* note 27, at 53; Lotte Bailyn, Breaking the Mold: Women, Men, and Time in the New Corporate World 24 (1993); Neil, *supra* note 16, at 1 (quoting NALP Executive Director, Paula Patton).

53. Catalyst, *supra* note 16, at 40; Epstein, *supra* note 29, at 298; Harvard Women Law Students Ass'n, Presumed Equal: What America's Top Women Lawyers Really Think About Their Firms 72 (1995); Deborah L. Rhode, "Myths of Meritocracy," 65 Ford. L. Rev. 585, 588 (1996). In the NALP survey, half of the women believed that female attorneys were considered less committed than their male colleagues. Willard & Patton, *supra* note 29, at 37. In the Epstein study of part-time lawyers, only 1% had become partners. Epstein et al., *supra* note 9, at 56.

54. Women's Bar Association of Massachusetts, *supra* note 27, at 4; Linda Bray Chanow, Lawyers, Work and Family: A Study of Alternative Schedules at Law Firms in the District of Columbia 14-15 (Women's Bar Association, District of Columbia).

55. Women's Bar Association of Massachusetts, *supra* note 27, at 35-38; Epstein et al., *supra* note 9, at 31-33.

56. Women's Bar Association of Massachusetts, *supra* note 27, at 54.

57. Rhode, *supra* note 7, at 41; Linda Hamilton Krieger, "The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity," 47 Stan. L. Rev. 1161 (1995).

58. Harvard Women's Guide, Presumed Equal, at 72. See Harrington, *supra* note 40, at 50; Chanow, *supra* note 54, at 14-15.

59. Epstein et al., *supra* note 9, at 66-69; Chanow, *supra* note 54, at 14-15.

60. Women's Bar Association of Massachusetts, *supra* note 27, at 31; Cathlin Donnell, Joyce Sterling & Nancy Richman, Gender Burdens: The Results of the Careers and Compensation Study (Colorado Women's Bar Association 1998).

61. Renee M. Landers, James B. Rebitzer, and Lowell J. Taylor, "Rat Race Redux: The Adverse Selection in the Determination of Work Hours in Law Firms," 86 Am. Econ. Rev. 329 (1996); Epstein et al., *supra* note 9, at 56; Boston Bar Association, *supra* note 2, at 31; Neil, *supra* note 16, at 22 (quoting Patton).

62. Landers, *supra* note 61.

63. ABA Model Rules of Professional Conduct, Rule 6.1; ABA Model Code of Professional Responsibility, EC 2-25, 8-3.

64. See Rhode, *supra* note 17, at 124, 145; Aric Press, "Eight Minutes a Day," Am. Law., July 2000, at 13.

65. See sources cited in Rhode, *supra* note 22, at 2420; Donald W. Hoagland, "Community Service Makes Better Lawyers," in The Law Firm and the Public Good 104, 109 (Robert A. Katzmann ed., 1995); Jack W. Londen, "The Impact of Pro Bono Work on Law Firm Economics," 9 Geo. J. Legal Ethics 925, 925-26 (1996).

66. Rhode, *supra* note 22, at 2420. Nearly half of surveyed Americans believe that providing free legal assistance would improve lawyers' image. Gary A. Hengstler, "Vox Pupuli: The Public Perception of Lawyers: ABA Poll," ABA J., Sept. 1993, at 60, 60-61.

67. Press, *supra* note 64, at 13.

68. Kate Ackley and Bryan Rund, "Pro Bono: Casualty of the

Salary Wars?," Legal Times, April 10, 2000, at 1, 18; Roger Parloff, "Too Rich To Give," Am. Law., April 2000, at 15; Anthony Perez Cassino, "Skyrocketing Pay and Public Service," N.Y. L. J. March 31, 2000, at 24. Mark Hansen, "Trickle-away Economies," ABA J. July, 2000, at 20.

69. Cameron Stracher, "Go Go Bono," Am. Law., Dec. 2000, at 51.

70. See Keith Cunningham, "Father Time: Flexible Work Arrangements and the Law Firm's Failure of the Family," 53 Stan. L. Rev. 967 (2001); Boston Bar Association, *supra* note 2, at 10.

71. Arron, *supra* note 33, at 60; Nancy E. Dowd, "Resisting Essentialism and Hierarchy: A Critique of Work/Family Strategies for Women Lawyers," 16 Harv. Blackletter L. J. 185, 198 (2000).

72. The extent of the inequality is estimated differently by researchers using different methodologies. Compare studies cited in Williams, *supra* note 20, at 71 (citing studies suggesting that women perform about 70 percent of the tasks); Deborah L. Rhode, "Speaking of Sex" (1998) 7-8, 149 (citing studies suggesting that employed women spend about twice as much time on family matters as employed men) with Tamar Lewin, "Men Assuming Bigger Role at Home," N.Y. Times, citing James T. Bond et al., "The 1997 National Study of the Changing Workforce" (1998); Committee on Women in the Profession, "A Report on the Need for, Availability, and Viability of Flexible Work Arrangements in the New York Legal Community," 50 The Record 522, 528 (1995); Joan Brockman, "Gender in the Legal Profession: Fitting or Breaking the Mold 192-193" (2001).

73. Catalyst, *supra* note 11, at 10.

74. Rhode, *supra* note 7, at 40. The problem is experienced by women lawyers in other nations as well. See Brockman, *supra* note 72, at 186.

75. Rhode, *supra* note 72, at 153; Harrington, *supra* note 40, at 20; Schenker, *supra* note 18, at 556; Women's Bar Association of Massachusetts, *supra* note 27, at 53.

76. Meredith Wadman, "Family and Work," Washington Lawyer, November/December 1998, at 33; Deborah L. Rhode, "Gender and Professional Roles," 63 Fordham L. Rev. 39 (1994); Cunningham, *supra* note 70, at 987.

77. Diane E. Lewis, "Women Lawyers' Exodus," Boston Globe, Dec. 4, 2000, at A1.

78. Lisa Brennan, "Women Having It All: They're Mothers and Partners in New York: You Got a Problem With That?," Nat'l. L. J., Aug 17, 1998, at A1.

79. Boston Bar Association, *supra* note 2, at 17.

80. Nossel and Westfall, *supra* note 15 at 90, 259, 270.

81. Bailyn, *supra* note 52, at 23.

82. Wade F. Horn, "Dad May Be Eligible for Leave at Baby's Birth," Washington Times, Sep. 21, 1999, at E2; Cunningham, *supra* note 70, at 975.

83. For such stories, see Harvard Women's Law Association, "Presumed Equal," at 58; "Women Still Struggle to Climb Legal Ladder," Ill. Legal Times, May, 1996, at 16 (comments of Fox). For improvements, see *id.* (comments of Torrado); Chanen, *supra* note 49, at 90.

84. Families and Work Institute, "Business Work-Life Study" (1998); John Turrettini, "Mommie Dearest," Am. Law., April 2000, at 19. See also Chanen, *supra* note 49, at 90, 91.

85. Cunningham, *supra* note 70, at 994. See also Final Report and Recommendations of Eighth Circuit Gender Bias Task Force, 31 Creighton L. Rev. 7, 54 (1997); Chanow, *supra* note 54, at 16; Scott Brede, "Father Friendly Firms Flourish," Conn. L. Trib., July 17, 2000, at 8.

86. See sources cited in note 85 *supra*.

87. Catalyst, "A New Approach To Flexibility," *supra* note 16; Catalyst, "Flexible Work Arrangements," *supra* note 16.

88. Keith H. Hammonds, "The Daddy Trip," Bus. Week, Sept. 21, 1998, at 56; sources cited in note 87 *supra*.

89. Nossel and Westfall, *supra* note 15, at 42-43, 270.

90. Boston Bar Association, *supra* note 2, at 17. See also Catalyst (1997), "A New Approach To Flexibility," *supra* note 16, at 25-26.

91. See ABA Commission on Women in the Profession, *supra* note 24, at 25-26; Clara Carson, "The Lawyer Statistical Report (1999) (Table 9). Among recent law school graduating classes, about a third of women, compared with a quarter of men, took government, public interest, or judicial clerkship positions. NALP Foundation, "Jobs and JDs: Employment and Salaries of New Law Graduates" (1999).

92. See Mary Jo White, "Glass Ceilings and Open Doors: A Response," 65 Fordham L. Rev. 619, 622 (1996) (describing advantages for women in Justice Department, where women lawyers outnumber men). According to the most recent data available, entering salaries for lawyers in law firms average \$85,000; for governmental and public service, they range from \$31,000-\$36,000. "Associate Salaries," Partner's Rep., Feb. 2001, at 2; U.S. Dept. of Labor, "Occupational Outlook Handbook, 2000-01 Edition 145," at <<http://stats.bls.gov/oco/ocos053.htm>>.

93. Mary Wisniewski Holden, "Women and Minorities Find Benefits at Government Offices," Chicago Lawyer, May, 1997, at 16.

94. Dowd, *supra* note 71, at 185; Epstein, et al., *supra* note 9, at 61 (noting that some government agencies do not permit part-time supervisors).

95. See Rhode, *supra* note 17, at 103-04 (describing caseload pressures for public defenders and civil legal aid offices).

96. Boston Bar Association Task Force, *supra* note 4, at 14.

97. Catherine Aman, "How Sweet It Is: Despite the Mergers and Fast Pace, In-House Lawyers Are Basically Happy," Conn. L. Trib., Oct. 9, 2000, at 12 (describing Corporate Counsel's Quality of Life Survey).

98. Carter, *supra* note 3, at 37.

99. Catalyst, *supra* note 42, at 11; Catherine Aman, "The Right Balance," Law.com, June 5, 2001, at <http://www.law.com>.

100. See Deborah L. Rhode, "The Difference Difference Makes: Women and Leadership" (forthcoming); Catalyst, "A New Approach to Workplace Flexibility," *supra* note 16, at 37-39; Peggy Orenstein, "Flux: Women on Sex, Work, Kids, Love, and Life in a Half-Changed World 274" (2000).

101. Williams, *supra* note 20, at 71; See Catalyst, "A New Approach to Flexibility," *supra* note 16, at 33.

102. See Rhode, *supra* note 7, at 9-10, 28-30.

103. Debra Baker, "showmethemoney.com," ABA J. June, 2000, at 18; David Leonhardt, "I Am Lawyer, Hear Me Whine," N.Y. Times, Feb. 6, 2000, at E2.

104. *Id.*, at 10; Cameron Stracher, "Double Billing" (1998); Patrick J. Schiltz, "On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession," 52 Vand. L. Rev. 871 (1999); William R. Keates, "Proceed with Caution: A Diary of the First Year at One of America's Largest, Most Prestigious Law Firms" (1997).

105. Epstein et al., *supra* note 9; Rhode, *supra* note 7, at 10; Lawrence J. Fox, "Money Didn't Buy Happiness," 100 Dick. L. Rev. 531, 535 (1996); Bogus, "Death of an Honorable Profession," *supra* note 10; Walt Bachman, "Law v. Life: What Lawyers are Afraid to Say About the Legal Profession" (1995).

106. Epstein et al., *supra* note 9, at 23; Counsel Connect Debates, "Part Time Partners," April, 1997, at 82 (comments of Robert Hardie).

107. Rhode, *supra* note 7, at 168-74; William G. Ross, "The Honest Hour: The Ethics of Time-Based Billing by Attorneys" (1996); Lisa G. Lerman, "Blue-Chip Bilking: Regulation of Billing and Expense Fraud by Lawyers," 12 Geo. J. Legal Ethics 205 (1999); James P. Schratz, "I Told You to Fire Nicholas Farber: A Psychological and Sociological Analysis of Why Attorneys Overbill," 50 Rutgers L. Rev. 2211 (1998).

108. "New Models for Part-Time or Flex-Time Partnerships," Compensation and Benefits for Law Offices 8 (January 1997).

109. *Id.* (comments of Hannelore Hasl); Laura Goddard, "The Top Five Myths About Part-Time Policies," in Perspectives, Spring 1997, at 3 (quoting client: "if I can reach her, why would I care if she was here?").

110. Epstein et al., *supra* note 9, at 90. See Leibowitz, *supra* note 9, at B11.

111. "Firm Feedback on Part-Time Lawyering," *Mass. Lawyers Weekly*, April 22, 1996, at B4.

112. Landers et al., *supra* note 61; Catalyst, *Flexible Work Arrangements*, *supra* note 16, at 61; Williams, *supra* note 20, at 76; Women Lawyers of Massachusetts, *supra* note 27, at 24; Cunningham, *supra* note 70, at 987; "Panel on Redesigning Work and the Benefits Related to It," 49 *Amer. U. Law* 851, 882 (2000) (reporting concerns that marketing a firm's lower hours would earn it a reputation as a "loser law firm").

113. Rhode, *supra* note 7, at 37; Harvey Berkman, "Past Struggles Echo as Clinton Makes a Pitch for Pro Bono Work," *Nat'l L.J.*, Aug. 2, 1999, at A8.

114. In the most recent survey by the National Association for Law Placement, 38% of associates left by the end of their third year, and 60% by the end of their fifth year. NALP Foundation, *supra* note 20, at 17.

115. Women's Bar Association of Massachusetts, *supra* note 27, at 51.

116. Diane E. Lewis, "Women Lawyers' Exodus," *Boston Globe*, Dec. 4, 2000, at A1.

117. Marilyn Tucker, *supra* note 39, at 50; NALP Foundation, *supra* note 19.

118. NALP Foundation, *supra* note 20, at 31.

119. Joan Williams, Personal Interview, Jan. 6, 2001; see also Joan Williams and Cynthia Thomas Calvert, "Don't Go: We Can Change," *Legal Times*, Feb. 5, 2001, at 20.

120. ABA Commission on Women in the Profession, *supra* note 24, at 530; Wendy Davis, "Associate Flight Leads to New Look at Pyramid," *N.Y.L.J.*, May 22, 2000, at 1; Cunningham, *supra* note 70, at 970.

121. Offices providing alternative work schedules had attrition rates of 37%, compared with 44% in offices without such options. Other important factors were mentoring programs and alternatives to equity partnerships. NALP Foundation, *supra* note 20, at 19, 83. See also NALP Foundation, *The Lateral Lawyer: What Makes Them Leave and What May Make Them Stay* 159, 160 (2001) (discussing lower billable hours and options for part-time work as a factor in job changes).

122. ABA Commission on Women in the Profession, *Lawyers and Balanced Lives* 23 (1990); Williams, *supra* note 20, at 112; Boston Bar Association, *supra* note 2, at 25; Bailyn, *supra* note 52, at 80-84; Chanow, *supra* note 54, at 8; M. Diane Vogt and Lori-Ann Rickard, *Keeping Good Lawyers: Best Practices to Create Career Satisfaction* 55 (ABA Law Practice Management Section, 2000); Ira D. Singer, "Work-Life Benefits Can Lighten the Load," *Bus. & Health*, Oct. 1, 1999, at 25.

123. See note 18 *supra*. Part-time lawyers are less susceptible to burnout and depression. See Kathryn A. Plonsky, *Balancing Law and Parenthood: Part-Time Careers in Law* 16 (2000). For a discussion of the toll of stress and overwork, see Carol Hymowitz and Rachael Silverman, "Stressed Out: Can Workplace Stress Get Worse," *Wall St. J.*, Jan. 16, 2001, at B1; Laura Gatland, "Dangerous Dedication," *ABA J.*, Dec. 1997, at 28; and Kemba J. Dunham, "Stressed Out: Seeking the New, Slimmed Down Workday, 9 to 5," *Wall St. J.*, Jan. 17, 2001, at B1; Brockman, *supra* note 72, at 210.

124. Plonsky, *supra* note 123, at 17; "How Firms Can Make Part-time and Flex-Time Partnerships Work," *Law Office Management and Administration Report*, April, 1997, at 6; Brenda Sandburg, "Time Out: More Attorneys Are Opting To Work on Contract to Balance Work, Private Lives," *The Recorder*, May 9, 2000, at 1; Mark Schauerte & Peter Beller, "Diversity Survey: Women Mark Decade of Progress But Note More Goals at Law Firms," *Ch. Law.*, June 2000, at 8.

125. Laura Gatland, "The Top 5 Myths About Part-Time Partners," *Perspectives*, Spring, 1997, at 11; Boston Bar Association, *supra* note 2, at 29.

126. Vogt and Rickard, "Keeping Good Lawyers," at 71 (discussing 1999 American workplace study's finding that organizations that assisted employees with work/life balance issues had highest long-

term retention rates); James T. Bond, *The National Study of the Changing Workforce (Families and Work Institute 1998)*; NALP Foundation, *supra* note 20, at 19. See also Chanow, *supra* note 54 (discussing positive effects of part-time on retention rate); Bailyn, *supra* note 52, at 109. According to Nora Plesant, cofounder of Lawyers Advancing Alternative Work Schedules, "people who really have found workable part-time arrangements ... are more dedicated to the firm that has made an accommodation to their life ... [they] are going to show the most loyalty to stay" (quoted in Cunningham, *supra* note 70, at 984); NALP Foundation, *supra* note 20, at 77 (discussing importance of work environment); Ellen Galinsky & James T. Bond, "The 1998 Business Work-Life Study," (1998); Miriam Busch Scott, "Career Aligned With Other Life Commitments Makes For Productive Employees, Companies," *Employee Benefit Plan Review*, Dec. 1, 1999, at 16 (discussing positive effect of work/life benefits on employees' satisfaction and productivity).

127. Catalyst, *Flexible Work Arrangements*, *supra* note 16, at 16. For other evidence of cost effectiveness, see Jean Stapleton, Introduction: *The American Woman 2001-2002*, at 30 (Cynthia B. Costello and Ann J. Stone, eds. 2001) and sources cited in note 128 *infra*.

128. Cunningham, *supra* note 70, at 1004; MacKenzie Carpenter, "A Few Ounces of Prevention," *Pittsburgh Post-Gazette*, June 5, 1996, at A1; Deborah J. Swiss, "Good Worker or Bad Parent? The Conflict Between Policy and Practice," in *Shared Purpose: Working Together to Build Strong Families and High Performance Companies* 93 (Marie G. MacKane and Richard J. Levin eds., 1998); Richard Elsberry, "The Family Friendly Office," *Office Systems*, March 1, 1999, at 42.

129. Jeff Blumenthal, "EEOC Charge by Ex-Dechert Partner Alleges Sex Bias," *The Legal Intelligencer*, Dec. 14, 2000, at 1. For example, a former partner of a New York firm filed a claim with the EEOC arguing that its resistance to her use of paid vacation time to extend a maternity leave reflected a pattern of penalizing motherhood. *Id.*

130. ABA Commission on Women in the Profession, *supra* note 122; Catalyst, *A New Approach to Flexibility*, *supra* note 16; Boston Bar Association Task Force, *supra* note 2, at 34-42.

131. *Id.* at 36; Catalyst, *Flexible Work Arrangements*, *supra* note 16, at 55; Women's Bar Association of Massachusetts, *supra* note 27, at 45-49.

132. Charles Heckscher, "HR Strategy and Nonstandard Work: Dualism vs. True Mobility," in *Non Standard Work: The Nature and Challenges of Changing Employment Arrangements* 267, 283-84 (Francoise Carré, Marianne A. Ferber, Lonnie Golden & Stephen A. Herzenberg eds., 2000); Chanow, *supra* note 54, at 14.

133. Rhona Rapoport and Lotte Bailyn, *Rethinking Life and Work: Toward A Better Future* (Ford Foundation Report 1996). See also David A. Thomas and Robin Ely, "Making Difference Matter: A New Paradigm for Managing Diversity," *Harv. Bus. Rev.* Sept-Oct., 1996, at 79.

134. See ABA Commission on Women in the Profession, *supra* note 24, at 33; Catalyst, *Flexible Work Arrangements*, *supra* note 16; McCracken, "Winning the Talent War," at 161.

135. Karen Hall and P. Ham Livingston, "Perking Up," *Am. Law.*, Dec. 2000, at 60; Vogt and Rickard, *supra* note 122, at 79; Vanessa Blum, "Loyalty Money Can't Buy," *Legal Times*, Feb. 21, 2000, at 25; Phyllis Weiss Haserot, "Giving Attorneys What They Want: Perks May Beat Out Big Money as Tool to Recruit, Retain Top Attorneys," *Legal Intelligencer*, June 5, 2000, at 7; "Childcare Assistance Most Common Work/Life Benefit, Followed by Flexible Work Options," *Employee Benefit Plan Rev.*, Nov. 1, 2000, at 41.

136. ABA Commission on Women in the Profession, *supra* note 24, at 16; Nossel and Westfall, *supra* note 16, at 68, 99, 113, 129, 144, 173, 179, 187, 194, 200, 203, 204, 224, 228, 259, 264, 274, 356, 361, 366, 374, 379.

137. Galinsky and Bond, *supra* note 126, at vi. For example, the Washington, D.C. law firm Arnold & Porter has experienced recruitment and retention benefits from an on-site child care center that provides free backup care and full-time programs that employees pur-

chase on a cost-recovery basis. Sam Adler, “Arnold & Porter Offers Full Time Child Care,” 4 Law Firm Partnership & Benefit Rep. 4 (1996); see also Boston Bar Association, *supra* note 2, at 31; Jill Schachner Chanen, *supra* note 49, at 76.

138. Arnold & Porter is a case in point. Its childcare and benefits program has helped to earn it recognition by Working Mothers as one of the 100 best workplaces for American women and by Vault.com as one of the best law firms to work for in the country; “11th Annual Survey,” Working Mother, 1996; “12th Annual Survey,” Working Mother, October 1997.

139. Bruce Balestier, “Balancing Practice and Public Service,” N.Y.L.J. Nov. 3, 2000, at 24.

140. For discussion of such structures, see Boston Bar Association, *supra* note 2, at 34-38; Women Lawyers of Massachusetts, *supra* note 27, at 17-20; Carter, *supra* note 41, at 26.

141. The Report of the Task Force on Lawyers’ Quality of Life of the Association of the Bar of the City of New York found that about half of surveyed firms had bottom-up reviews, but only two reported using the results in evaluation of supervising attorneys. The Boston Bar Association Task Force on work-family imbalance reported that a number of firms had institutionalized bottom-up reviews, and that the comments of junior lawyers were “taken seriously” by senior attorneys and management. Boston Bar Association, *supra* note 2, at 36-38.

142. Joyce K. Fletcher and Rhona Rapoport, “Work-Family Issues as a Catalyst for Organizational Change,” in *The Work-Family Challenge* 143 (Susan Lewis and Jeremy Lewis eds., 1996); “Management: Consider Offering Part-Time,” Vault.com law newsletter, Oct. 2, 2000, at 1.

143. Quoted in I.A. Richards, *On TSE*, in *T.S. Eliot: The Man and His Work* 5 (Allen Tate ed., 1966).

144. Catalyst, *Flexible Work Arrangements*, *supra* note 16, at 61; ABA Commission on Women in the Profession, *Flexible Work Arrangements*, *supra* note 72, at 535.

145. See Arlie Russell Hochschild, *The Time Bind: When Work Becomes Home and Home Becomes Work* (1997) (describing the willingness of many professional and managerial employees to work extended hours at the office where their efforts are more rewarded than at home); Rhode, *supra* note 7, at 31-33 (describing the tendency of lawyers to focus on income as a source of satisfaction).

146. See notes 126-129, *supra*.

147. Women Lawyers of Massachusetts, *supra* note 27, at 16; Catalyst, *Flexible Work Arrangements*, *supra* note 16, at 54; Williams, *supra* note 20, at 96; Caroline V. Clarke, “Getting Flexible About Work Schedules,” *Am. Lawyer*, April, 1991, at 34.

148. Chanow, *supra* note 54, at 14.

149. NALP, *Perceptions of Partnership*, *supra* note 16, at 38, 44; Boston Bar Association, *supra* note 2, at 24-26; Rhode, *supra* note 7, at 46.

150. *Learning from Practice: A Professional Development Text for Legal Externs* 253 (J. P. Ogilvy, Leah Worthman, & Lisa Lerman eds., 1998); Catalyst, *Flexible Work Arrangements*, *supra* note 16, at 52-54; Vogt and Rickard, *supra* note 122, at 52, 62, 75, 129-132; Zappart, *supra* note 40, at 99, 138.

151. See ABA Commission on Women in the Profession, *supra* note 24, at 34; Bar Association of San Francisco, “Interim Report: Goals and Timetables for Minority Hiring and Advancement” (March 2000); “Diversity in the Workplace: A Statement of Principles,” (2000); Pro Bono Institute, *The Law Firm Pro Bono Project*, <<http://www.probonoinst.org/challenge>>; Law Firm Pro Bono Project, *Meeting the Challenge: 1995 Law Firm Pro Bono Challenge Report* (1995); Karen Coleman, “Firms Sign On to Pro Bono Pledge in S.F.,” *S.F. Daily J.*, Dec. 15, 2000; Blumenthal, *supra* note 50, at 3; Clarke, *supra* note 147, at 34.

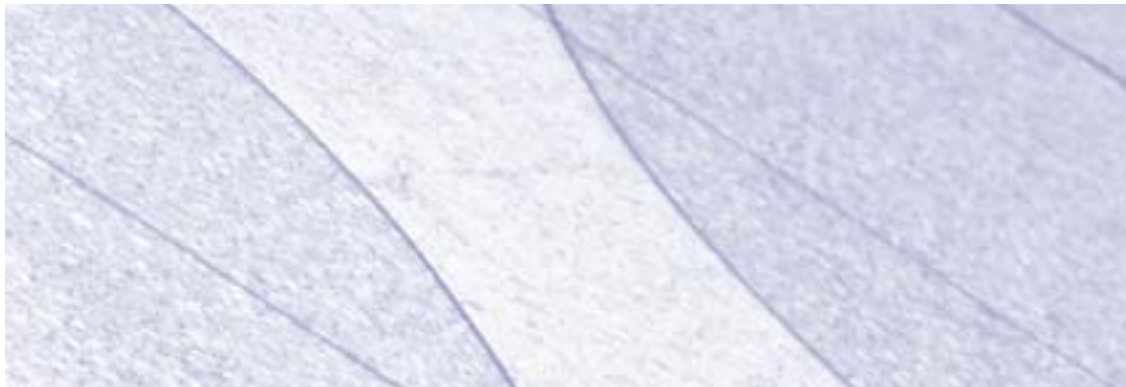
152. “Philadelphia Bar Association Salutes Firms with >Family-Friendly’ Job Policies,” *Metro. Corp. Couns.*, Oct. 2000, at 67.

153. Samborn, *supra* note 15, at 32.



ALTERNATIVE

WORK SCHEDULES



I. DEVELOPING AN ALTERNATIVE WORK SCHEDULE POLICY

A. The Rationale for a Formal Policy

Some organizations do not have specific written policies governing alternative work arrangements. In most cases, the stated reason is to preserve flexibility. In small organizations, there may be an additional disinclination to formalize many terms and conditions of employment. However, as the Introduction to this Manual notes, experts believe that it is generally preferable for employers to adopt formal written policies specifying the terms, conditions, and consequences of alternative work arrangements.

Absent such policies, some lawyers may doubt the organization's support for reduced or flexible schedules. A lack of predictability in arrangements makes it difficult for lawyers to plan their careers, and a lack of consistency in basic terms may encourage suspicions of favoritism. While alternative work policies need to preserve adequate flexibility in adjusting to individual needs and circumstances, the development of basic guidelines can help minimize the risk or appearance of unfairness. Formal policies also can communicate a message of support that can be important to lawyers in deciding whether to join or leave an organization, or to adopt an alternative work arrangement.

B. The Policy Title

The name of the policy is important because it creates a first impression and communicates a message about the organization's attitude. To avoid the negative connota-

tions sometimes suggested by the term "part-time," and to emphasize the flexibility of the policy, the Commission recommends the title "Alternative Work Schedule" or "Flexible Work Arrangement."

C. Tone and Style

The tone and style of a policy is also critical in conveying an organization's support, or lack of support, for alternative schedules. For obvious reasons, the preferable approach is to state conditions in positive form. For example, some policies include language such as: "Normally, requests for part-time status will not be granted unless the lawyer is willing to work at least 50% of full-time and to maintain regular office hours." A better formulation could be: "Requests will be granted for lawyers willing to work at least 50% of their normal work week and to maintain regular office hours." Grudging assertions should be avoided, such as: "Part-time arrangements are not generally encouraged and are entirely discretionary, but the firm permits part-time arrangements on occasion;" or "Due to the nature of legal work, there is a limited amount of work that can be handled on a part-time basis; associates are generally expected to be available for assignments on a seven day, seven night per week basis." In essence, the policy should make clear that the organization supports alternative work schedules and will promote the cooperation necessary to make them successful.

II. DRAFTING AND IMPLEMENTING THE POLICY

A. Purposes and Eligibility

An alternative work policy should be as broad as possible in terms of purpose and eligibility. Ideally, lawyers should be able to elect an alternative work schedule for a variety of purposes, such as medical needs, family responsibilities, pro bono activities, teaching, writing, educational advancement, political pursuits, or bar activities. Such a schedule also may be appropriate for use by senior attorneys as a transition into retirement status. Some organizations favor some purposes over others, and some restrict availability to lawyers with infants or small children. Although alternative work schedules are most commonly requested by parents, there are strong reasons not to limit eligibility to these lawyers. Policies that appear to provide preferential treatment for a single group are more likely to arouse resentment and backlash by other lawyers. Moreover, when the policy is used almost exclusively by mothers, who are generally the parents with primary caretaking responsibilities, it reinforces the perception that workplace flexibility is a “woman’s issue.” Such perceptions frequently lead to marginalization and second-class status. Once an alternative work arrangement is seen as a “mommy track,” fathers may feel reluctant to use it, which then reinforces gender roles that are separate and unequal. Moreover, since a primary goal of the alternative work policy is to retain valuable lawyers, their motivations for seeking the arrangement should not be decisive as to its availability.

If, however, an organization does not find it feasible to grant all requests for reduced or flexible schedules at a particular time, preference should be given for family and medical needs. Such needs may arise from child or eldercare, or from the illness or disability of lawyers themselves or of their spouses, partners, parents, or relatives. Such concerns should assume priority because they are likely to be especially critical both in promoting lawyers’ health and welfare, and in insuring their equal opportunity. Because women assume a disproportionate share of family obligations, failure to accommodate such obligations will impair employers’ ability to secure a diverse, well-qualified workforce.

In evaluating requests for alternative work arrangements, an organization should not limit its availability to “superstars.” Rather, eligibility requirements should further the recruitment and retention of all qualified attorneys. Consistent with that objective, organizations may require some minimum period of full-time work, such as one year, before eligibility for an alternative schedule, in order to evaluate whether the attorney is performing

satisfactorily. However, many organizations also find it appropriate to hire experienced attorneys of proven ability on an alternative work schedule arrangement without requiring a minimum period of full-time work.

Organizations should avoid placing arbitrary limits on the number of lawyers eligible for alternative work schedules at any given time or in any particular practice group. Such limits are often based on the inaccurate assumption that alternative schedules are inevitably unprofitable or unworkable. In fact, organizations that are truly committed to workplace flexibility can generally find ways to make it successful. For example, some employers find that job sharing between two attorneys on reduced schedules solves problems of availability and client coverage. Such arrangements, or contracts with outside attorneys for exceptional demands, may help in staffing the peaks and valleys of some legal work. Alternatively, other organizations divide responsibilities among full and part-time lawyers to assure adequate coverage of unexpected demands.

A policy may appropriately acknowledge the various interests that must be balanced when considering alternative work schedules. In some instances, the staffing needs of the organization may prevent accommodation of all requested arrangements. However, the goals of an alternative work schedule policy cannot be met if the organization grants requests only on a first-come-first-served basis with limited availability.

B. Schedules

1. Schedule Structures

Effective alternative work schedules can take many forms. Policies should acknowledge a range of possibilities, such as telecommuting, job sharing, and adjustments in working hours, days in a week, weeks in a month, months in a year, or numbers of transactions. Some organizations find it desirable to specify a minimum percentage of time (e.g., 80% of full-time including non-billable hours); a percentage of the office’s average annual billable hours (e.g., no less than 60%, based on 1850 billable hours); or a certain number of days or hours per week (e.g., three days a week, 30 hours a week); or a specified number of billable hours per month. Whatever standards an organization chooses, the possibilities should be clearly communicated in the policy and implemented with fairness and flexibility.

Although flexibility is an essential element of a successful alternative work schedule, the nature of the work or the needs of the organization may sometimes require

predictable office hours or comparable arrangements for staff contact. Some regularity may be important for scheduling meetings and ensuring adequate supervision. Whatever their scheduling arrangements, lawyers should provide appropriate information about their availability to clients, colleagues, and staff.

2. Mutual Flexibility

The success of an alternative work arrangement depends on the flexibility, of individual attorneys, and their organizations. Lawyers working reduced or flexible hours may need to adjust their time commitments or to be available in person or by electronic communication for periods outside the predetermined schedule. Policies should make clear that attorneys on reduced or flexible hours have the responsibility to ensure that their work is handled properly, even if that means coming in to the office on an “off day” or returning phone calls and e-mails from home.

By the same token, organizations must show respect for the integrity of the alternative work arrangement. A common problem is “schedule creep,” the gradual escalation of part-time hours. Policies should provide for periodic review to determine whether the alternative schedule is being honored, and whether adjustments should be made to minimize or compensate additional work.

Such adjustments can include financial payments and compensatory time off. Increases in income, whether immediate or at the end of the year, should only serve as a temporary solution. The purpose of an alternative schedule for the lawyer is to have sufficient time for other commitments. This purpose cannot be met by financial adjustments. Although additional time off may be a more effective way of addressing lawyers’ needs, it will not fully compensate for the difficulties resulting from repeated failures to honor an alternative schedule.

3. Allocation of Work and Emergency Coverage

The reallocation of work required by an alternative scheduling arrangement presents two distinct issues. One involves coverage of urgent matters that arise when an attorney working a reduced or flexible schedule is not available. This coverage issue is not qualitatively different from other practice management issues that every organization must address—how to handle needs that arise when the assigned attorney is traveling, in court, in meetings, or under deadlines on another matter.

Whatever strategies the employer uses to address these general coverage concerns can also be appropriate for needs associated with alternative work schedules. To minimize the amount of emergency coverage required, all parties should make efforts to anticipate peak demands and to schedule controllable events at times when the attorney is available.

A second coverage issue involves the appropriate reallocation of nonemergency work. Problems can arise when

organizations expect other lawyers who are already fully committed to handle additional matters. This solution can breed resentment. Such burdens can undermine collaborative working relationships and compromise prospects for advancement by attorneys with alternative schedules. To avoid creating such backlash, the organization should determine, when considering a request for an alternative arrangement, how it can realistically manage a fair reallocation of work. If all attorneys with the required expertise and experience are already performing at maximum capacity, they should not be expected to provide additional coverage on a long-term basis. While most lawyers are willing to chip in for emergencies, they are likely to resent burdens that persist for an extended period.

An alternative may be to assign another lawyer on a reduced schedule to cover the additional work load. Adding a part-time or contract lawyer can sometimes be a cost-effective solution. If, however, an organization’s management decides to rely on the existing base of attorneys on the assumption that they are not working at maximum capacity, that message must be conveyed explicitly, so that any unhappiness can be directed at the responsible decision makers rather than at the part-time attorney.

C. Compensation

Policies on alternative work arrangements generally provide that compensation will be allocated on a pro rata basis. What that means in practice will vary depending on how the organization normally makes compensation decisions for full-time attorneys with equivalent status. For example, some law firms compensate associates in a lockstep manner; others provide a range of salaries within classes. Some give bonuses based upon hours, results achieved, merit, or business generation. Some share profits with associates.

In formulating alternative work schedule compensation, it is important first to identify all the factors that normally affect compensation, and then to assess the impact of the alternative arrangement on each of those factors. For example, if salary, bonus, or partnership track credits are influenced by merit or by hours above a required amount, an attorney on an alternative schedule should receive comparable treatment. If contributions by full-time attorneys toward nonbillable matters, such as recruiting, bar activities, committee assignments, and pro bono service, are normally considered in determining compensation, the same considerations should apply for attorneys with alternative work arrangements, and time for these activities should be built into their schedules. If associate salaries increase in lockstep, salaries for associates on alternative schedules should increase in proportion to the increase for their entering class.

A difficult issue may arise in organizations where bonuses make up a substantial part of the total compensation package and depend largely on the total number of

hours worked. If adjustments are not made for lawyers on reduced schedules, the effect may be to lock them into what would effectively be a depressed wage rate. This result may breed resentment and carry adverse incentive effects. As noted in the Introduction, attorneys on reduced schedules are often providing more cost-effective services than colleagues blearily working extended hours. Well-designed bonus policies should attempt to avoid penalizing productive part-time arrangements.

Equal treatment in compensation sends an important message about an organization's support for alternative work schedules. Policies governing such arrangements should explicitly describe their financial effect. Vague phrases such as "compensation will be adjusted appropriately" do not allow lawyers to make fully informed decisions about adopting alternative schedules, and do not adequately assure evenhanded treatment for those who choose to take them.

D. Benefits

Lawyers with alternative work arrangements generally are attempting to balance the demands of professional practice with other socially valuable commitments. Providing a generous benefits package is a way of rewarding such efforts and of encouraging the loyalty of lawyers working under challenging circumstances. The cost will be relatively small compared to the potential positive effects on recruitment and retention. For that reason, many organizations provide full employer-paid benefits for lawyers on alternative schedules. Other organizations seek to ensure horizontal equity across their entire workforce by prorating benefits for lawyers on reduced schedules. Such benefits include: medical insurance; disability insurance; life insurance; retirement plans; vacations; and bar membership dues.

If an organization has a cafeteria benefits plan, lawyers on alternative schedules should have access on a prorated basis. For example, if the employer allots \$10,000 in benefits to full-time attorneys, an attorney working half-time should receive \$5,000 to allocate among the benefits options available.

E. Work Assignments

Appropriate assignments are a fundamental part of any successful alternative working arrangement. Like full-time practitioners, attorneys on reduced or flexible schedules need intellectual challenge and opportunities for professional growth and development. Effective policies should acknowledge this need and should attempt to prevent the common risk of low-quality assignments. Lawyers with alternative arrangements should not receive a disproportionate share of undesirable routine work. Nor should they be expected to handle matters requiring significant travel or time commitments beyond the scope of their schedules.

No single approach to assignments is necessarily best. Either substantial responsibility for small cases or discrete obligations on larger, high-visibility matters may be appropriate. A well-designed policy seeks to reduce the volume, rather than to limit the type of work performed. Assignments should be monitored to prevent attorneys on alternative schedules from becoming trapped in "dead end" matters or excessive workloads.

F. Performance Reviews

An alternative work policy should make clear that the performance of lawyers on reduced or flexible schedules will be evaluated on the same basis as that of full-time lawyers. A review process should include formal evaluations at regular intervals and should include opportunities to assess the alternative arrangement. For example, if a lawyer on a reduced schedule is not receiving appropriate assignments or is working hours substantially above or below the agreed upon percentage, the parties should discuss an appropriate adjustment to address those problems. As discussion below indicates, an alternative schedule advisor could assist the lawyer in preparing for productive review sessions.

Organizations should reserve the right to terminate an alternative work schedule if the attorney is not meeting its requirements. For example, the policy could state that, upon one month's notice, an organization may modify or discontinue an alternative work schedule arrangement, provided that the reasons are discussed with the affected attorney and an opportunity is given to correct the problem.

G. Promotions and Progression Toward Partnership

1. Promotion Opportunities

A crucial aspect of an alternative work schedule policy is its effect on professional advancement. Many organizations have had little trouble in maintaining part-time lawyers on the track for promotion or partnership. Professional experience and expertise have the same value whether acquired on a full-time or part-time basis. Accordingly, the period spent on an alternative schedule should be counted as part of the progression toward partnership or other senior positions.

Some law firm policies provide that working less than full-time will slow progression toward partnership on a pro rata basis. Other firm policies provide that the effect of reduced schedules on the time of consideration for partnership will depend upon the professional development of the individual attorney. Although the latter, more flexible approach has the advantage of tailoring advancement opportunities to the particular capability of each attorney, some further elaboration may be necessary. Lawyers considering alternative arrangements deserve some guidance in addressing the career costs. At

a minimum, an effective policy should therefore specify the criteria that will apply to promotions of lawyers on alternative schedules. For example, a policy may indicate that partnership progression will depend not only on the quality and amount of billable work, but also on other contributions, such as bar association and committee service, client development, and pro bono activities.

Many firms are grappling with the question of whether to require a lawyer to return to full-time status before being considered for partnership. The traditional approach has often been to allow only full-time lawyers to be eligible for partnership. Yet as firms have increasingly recognized, when associates with alternative work arrangements have received the appropriate training, and have gained the skills and respect necessary to qualify for partnership, then requiring them to move out of part-time status seems unnecessary. Such a requirement is likely to have a disproportionate adverse effect on women, and it is particularly illogical if partners are permitted to work alternative schedules. These considerations have prompted most experts and bar association model policies to allow lawyers working alternative schedules to be eligible for partnership.

2. Voluntary Election Off Partnership Track

The Commission has received numerous requests for guidance in cases where attorneys on alternative schedules themselves have requested to be temporarily taken off partnership tracks. Such arrangements can be desirable for all concerned if they are truly voluntary, rather than the product of firm policy or pressure, and if they are coupled with later opportunities to return to a partnership track. In evaluating this option, attorneys should consider whether the firm's culture will enable them to have a realistic chance for promotion if they subsequently seek partnership positions.

3. Non-Partnership Positions

Over the last two decades, an increasing number of firms have recognized the inefficiencies of the “up or out” process and have created new statuses for lawyers short of full equity partnerships. Positions such as “senior attorney” and “of counsel” serve to retain valued associates without conferring all the rights and obligations of partnership. These positions are also sometimes used to integrate lateral attorneys into the firm prior to a partnership decision. Such transitional positions may appear appropriate where the firm is uncertain about its future volume of work in new lawyers' areas of expertise, or feels the need for a period of evaluation after their transfer from another firm.

The fact that attorneys are using or have used an alternative work schedule should not of itself relegate them to non-partnership positions. As noted in the Introduction, many individuals are deterred from adopting such schedules out of concern that they would be locked into sec-

ond-class status. To make alternative work arrangements a realistic option, firm policies should indicate that lawyers' progression toward partnership will be judged on all relevant criteria and that temporary part-time status need not carry a permanent price.

H. Approval Procedures

1. Requesting an Alternative Work Schedule

All requests for changes in work schedules should be submitted in writing to a designated individual or committee. Policies should specify the basic information and the level of detail required for such requests. For example, relevant information may include the anticipated duration, hours, and office schedule of the proposed alternative arrangement. Some organizations also require reasons for the request.

Attorneys should submit their proposal far enough in advance to provide employers with reasonable time to evaluate the arrangement and to plan the necessary changes in assignments and staffing. Some organizations ask for two to three months' advance notice. However, the time periods for requests following family and medical leaves should be more flexible to accommodate lawyers' difficulties in predicting the extent of health-related needs or the effectiveness of caretaking arrangements.

2. Approving an Alternative Work Schedule

Most organizations specify an approval process for alternative schedule requests. That process should be clearly articulated in the organization's policies and applied uniformly to all lawyers. It should ensure consultation with the parties most directly affected and should be sufficiently flexible to handle unusual circumstances. For example, a policy might provide that an executive committee or managing partner will consider requests beyond the terms of the policy. If approval procedures are decentralized, experience with the policy may suggest the need for some review process to ensure reasonable and evenhanded treatment.

I. Duration of an Alternative Work Arrangement

An effective policy on alternative work arrangements should not limit their duration. Such limits carry negative implications about the desirability of alternative schedules and are not necessary to cope with problems that may arise. Experience indicates that the vast majority of lawyers will want to restrict the duration of their alternative arrangements and that arbitrary cut-offs are less useful than individualized determinations. Organizations should regularly evaluate alternative arrangements to determine their continued feasibility and to identify appropriate adjustments.

When lawyers request an alternative work schedule, they should, if possible, estimate the duration of the pro-

posed arrangement so that the organization may plan accordingly. However, some needs are difficult to predict at the outset, and others, especially those involving parental responsibilities, are likely to continue for an extended period. Flexibility in light of changing circumstances is necessary for all concerned.

J. Return to Full-Time Status

Alternative work schedule policies should specify the process by which lawyers on alternative schedules can resume full-time status. For example, the policy should consider:

- whether return to full-time status will be automatic upon the expiration of an initially agreed-upon period or whether a special request will be required;
- if a special request is necessary, what procedure and timetable the applicant must follow and what criteria will guide decisions;
- if there will be a transition period before a lawyer on an alternative schedule returns to full-time status; and
- how the return to full-time status will affect compensation, work assignments, and partnership determinations, and who will make these determinations.

K. Education, Evaluation, and Support Services

Experience over the past decade has demonstrated that adoption of a well-designed alternative work policy is only the first step toward success. Organizations also

need to develop educational programs, evaluation procedures, and human resources services to ensure that the policy has more than a “shelf life” and is feasible in practice. Some employers have found that regular training programs are crucial to build awareness of the practices that can undercut alternative work policies. Many organizations have found it similarly helpful to designate an alternative schedule advisor to answer questions about the policy, to monitor its effectiveness, to assist lawyers prepare requests, and to help solve any problems that may arise in particular working relationships. In smaller organizations, a managing partner, department head, or human resources director could assume this role.

Experience also has shown that tracking certain key information will be helpful in evaluating the perceived accessibility and effectiveness of an alternative work policy. Such information includes:

- Usage rate: What percent of lawyers are working on alternative schedules? For how long?
- Scheduling Practices: What are the schedules that these lawyers have agreed to work and what are the schedules that they actually work?
- Comparative promotion and attrition rates: What are the relative promotion and attrition rates among full-time attorneys and attorneys on alternative schedules?

Such data may suggest areas in which further changes in policy or practices are necessary to support alternative work arrangements.

III. ALTERNATIVE WORK SCHEDULES FOR PARTNERS

Alternative work schedules should be an option open to senior as well as junior lawyers. In many organizations, the absence of such options often contributes to disproportionate attrition rates of women in upper-level positions. Lateral movement among lawyers is a fact of life, and alternative schedule policies are often a factor for lawyers considering whether to change jobs. Since organizations have a greater investment in senior than junior lawyers, offering alternative work arrangements to both groups is generally a cost-effective retention strategy in today's competitive legal market. Experience at many organizations has demonstrated that lawyers on alternative schedules can be effective in all of the supervisory, managerial, and business development functions that senior positions require.

Although most of the considerations discussed earlier regarding alternative work schedules are as relevant for senior as well as junior lawyers, this does not mean that a single policy for both groups is always appropriate. Organizational needs vary, and the important point is not whether policies are separate or the same, but whether they speak effectively to concerns that may affect lawyers at different levels in different ways.

A. Compensation and Voting Rights

Decisions concerning partners' compensation generally involve a complex process that also varies considerably across firms. Although the merits of particular compensation formulas are beyond the scope of this Manual, a review of prevailing approaches suggests some general issues that a policy should address. One involves the points or percentage shares that may affect compensation above a certain base level. Some firms maintain alternative schedule partners at their full-time point levels, but adjust compensation pro rata based on hours worked.

Another issue involves voting. The right to vote on firm matters on which other partners vote should not be affected by an alternative work arrangement. Neither should equity partners be relegated to non-participating, non-equity status because of their alternative schedule.

B. Nonbillable Work

Policies for partners on alternative schedules should specify the firm's expectations regarding nonbillable work.

The consequences of not meeting these expectations should be the same for full-time partners as for those working part-time. A multitude of nonbillable contributions can influence partner compensation, including business development, committee work, pro bono service, and bar activities. If the firm rewards full-time partners for such activities, the same benefits should be available on a pro rata basis for partners on alternative schedules. Conversely, if the firm does not penalize full-time partners for failing to participate in some of these activities, it should not hold lawyers with alternative work arrangements to higher standards.

C. Supervision

Concerns are often raised about the availability of partners on alternative schedules to supervise associates. Effective supervision involves monitoring work and providing appropriate guidance and feedback. The adequacy of performance depends more on lawyers' skills and commitment than time in the office. Many full-time partners are not sufficiently available, even when in the office, to answer questions or review work. By contrast, many part-time partners are accessible even at home. Indeed, as the Introduction notes, attorneys on reduced schedules may be more available than colleagues who are constantly traveling, in court, or tied up in meetings. With organization and planning, lawyers on alternative schedules can provide effective supervision.

D. Benefits

Alternative schedule policies for partners and lawyers in supervisory positions should also address benefit issues that may be affected by their status, such as those involving retirement and sabbaticals. Organizations that adopt a single policy for all attorneys should clearly specify any benefit provisions that vary for particular groups.

E. Revisions of the Partnership Agreement

Firms should review their partnership agreements to determine if they require partners to engage in full-time practice. If so, the agreement should be amended to permit alternative work schedules and to explain the process for approval of such arrangements. This approval process can track the process for handling associate requests.

IV. RESPONSIBILITIES OF ATTORNEYS, STAFF, AND COLLEAGUES

A. Attorneys' Responsibilities

Attorneys on alternative schedules must assume responsibility for fulfilling their obligations to colleagues and clients. When not in the office, attorneys on alternative schedules should maintain sufficient contact to determine whether urgent matters have arisen. The point is not that individuals should be perpetually on call during off hours, but rather that they should help to ensure that client and organizational needs are met.

One risk is that attorneys with alternative work arrangements will end up working close to full-time schedules for only part-time pay. While organizations have a responsibility to honor reduced schedules, attorneys also have a responsibility to communicate any consistent failure to do so. If the organization does not have an Alternative Schedule Advisor, it

may be appropriate to speak with a supervising attorney, mentor, department head, or managing partner. Attorneys should address significant problems when they arise, not wait for an annual review.

Attorneys on alternative schedules should also develop practice strategies to ensure that all of their professional responsibilities will be met. For example, maintaining status memos on pending work can provide colleagues with sufficient background to handle emer-

gencies. Giving prompt notice of any likely changes in schedule can enable affected parties to plan accordingly. Working with supervisors to set realistic priorities can help attorneys to balance client development, civic, bar, and other nonbillable activities.

B. Staff Responsibilities

Law is a service business. When clients, colleagues, or others outside the organization attempt to contact an attorney during off hours, the staff should have specific instructions about how to handle such calls. While a clear procedure is useful for all attorneys, it is particularly necessary for attorneys with alternative work arrangements.

Although staff generally should seek to be as helpful as possible, they should also have explicit guidance about how much information to supply, and what to tell callers about when they can expect a response. If either the tone or the content of a message suggests that it is urgent, staff should contact the attorney who is out of the office or the colleagues designated to provide back-up coverage.

C. Colleagues' Responsibilities

When alternative work arrangements fail, it is often because of self-fulfilling expectations that they will fail, and conduct that reflects those assumptions. Such conduct takes a variety of forms, such as allowing stereotypes about the lack of attorneys' commitment or availability to influence allocation of assignments and performance reviews; or imposing work demands incompatible with the alternative schedule.

To minimize these risks, the organization's leadership should communicate to all lawyers both the benefits of an alternative schedule policy and the strategies necessary for its success. Employers must make clear the support and commitment necessary on the part of all concerned to make the policy work. That message should be conveyed through multiple channels. Alternative scheduling topics should be part of standard orientation and training sessions. Copies of alternative work policies and information about implementation should be available to all lawyers and staff. Managing or supervising lawyers should initiate individual discussions with those whose support is lacking.

One risk is that attorneys with alternative work arrangements will end up working close to full-time schedules for only part-time pay.

V. MYTHS ABOUT ALTERNATIVE WORK ARRANGEMENTS

It may also be necessary for supporters of alternative work schedules to help counter common myths about such arrangements. Some lawyers worry about “opening the floodgates” to arrangements that are unprofitable to the organization or unacceptable to its clients. In fact, as the Introduction noted, the research available provides little evidence for such fears. Professionals on reduced or flexible schedules tend to be more, rather than less, productive than full-time colleagues, and have not encountered significant problems with client relationships. Nor have organizations experienced substantial problems with excessive demand. Should such difficulties arise, employers always retain the option to limit the number or purpose of alternative arrangements to meet legitimate staffing needs. Concerns about undue expenses from overhead and benefits have also been overstated. Shared staff and office space, coupled with improved technologies for telecommuting, can often solve logistical difficulties. Compensation formulas that pro rate salaries and benefits can address other financial concerns.

In evaluating economic consequences, organizations also need to consider the long term advantages of alternative work arrangements: retention of talented, experienced attorneys; preservation of client and collegial relationships; and reduction in training and recruitment costs.

Floodgate fears and staffing concerns sometimes arise with special force in small organizations. Many lawyers assume that only large firms and corporations can handle alternative work schedules because they have a greater

depth of human resources. Yet the materials reviewed for this Manual confirm that many small organizations have successfully implemented alternative work policies. These organizations have often realized an additional advantage by attracting highly qualified attorneys who were unable to reach such accommodations in other practice settings. In addition, many small employers have found it cost-effective to hire part-time attorneys to share work loads or to handle specific projects.

Related myths are that alternative schedules are appropriate only in someone else’s specialty. Evidence reviewed by the Commission reveals examples of successful alternative arrangements across virtually every field of practice and every type of organization. With realistic planning and good faith efforts, it is generally possible to provide effective performance without unreasonable burdens.

If an organization has had some experience to the contrary, it is important not to let a few negative experiences serve as proof that alternative arrangements cannot be successful. The “we tried it once and it didn’t work” mindset can undermine efforts to determine why it failed to work, and what could be done differently in the future. Part-time arrangements can fail for many reasons—so can full-time ones. The reasons are not necessarily good predictors for other attorneys. A few examples do not constitute a statistically valid sample, and thousands of professional workplaces now function with efficient alternative arrangements that were once presumed impossible.

VI. CONCLUSION

Properly structured alternative work arrangements are a necessary and effective response to the changing conditions of legal practice. Particularly in a profession where half the new entrants are women, organizations must find ways of helping members achieve a balanced life. To attract

and retain qualified lawyers, employers need to provide flexible workplace structures. In the long run, concerns of equal opportunity and economic efficiency point in the same direction. Balanced lives should be a priority for all lawyers, individually and collectively, in the 21st century.

SAMPLE POLICY: ALTERNATIVE WORK SCHEDULE

PREFACE

The following sample policy should serve as a guideline for developing effective policies on alternative work arrangements. In drafting such policies, lawyers should take into consideration the particular characteristics and

cultures of their workplaces. This sample policy is intended as a useful starting point for institutionalizing effective alternative work arrangements.

Sample Policy: Alternative Work Schedule

A. Introduction

The Firm recognizes that individual lawyers who have strong commitments to the practice of law may, at times, find it necessary to adjust or reduce their work schedules. The Firm has an equally strong commitment to providing alternative work arrangements for lawyers in appropriate circumstances. The Firm believes that lawyers can and will remain committed professionals while working on alternative schedules, and that such schedules should not suspend opportunities for career development, experience, and advancement. Therefore, the Firm will make every reasonable effort to accommodate requests for alternative schedules from lawyers willing to work at least fifty percent of their prior annual billable hours and to maintain regular office hours.

The Firm also recognizes that to work effectively, an alternative work schedule must be fair to all lawyers in the office and responsive to the needs of its clients. Partners and associates will make good faith efforts to ensure that lawyers on alternative schedules can meet their obligations in a manner consistent with their designated work arrangements. The Firm will not consistently expect or require lawyers on alternative schedules to be at the office, or to work at home, during their off hours. Parties will communicate promptly concerning perceived problems and proposed solutions with respect to maintaining the approved schedule.

It is equally important for lawyers on alternative schedules to remain flexible and to accommodate needs involving travel, irregular or extended hours, or occasional highly concentrated periods of work. Availability on a flexible basis may be important to lawyers' career development and advancement.

B. Eligibility and Duration

All lawyers are eligible to request an alternative work arrangement after they have been employed by the Firm

for one year. There is no predetermined limit to the number of individuals who may work an alternative schedule or to the length of time of such arrangements. However, in considering proposals, the Firm will be guided not only by the needs of the attorney making the request, but also by the overall needs of the Firm and its clients.

C. Alternative Schedules

An alternative work schedule may be structured in any number of ways, including reductions in the number of hours, days in a week, weeks in a month, or months in a year. Lawyers may also work on a transaction-by-transaction basis, or at an alternative work site. Because the schedule that is effective for one attorney may not be for another, individuals should have wide latitude in crafting their own arrangements as long as the following conditions are met:

1. The attorney works at least fifty percent of his or her prior average annual billable and nonbillable hours.
2. The lawyer is sufficiently available in or out of the office to meet the needs of clients, colleagues, staff, and other appropriate parties.
3. The lawyer remains in contact with an assistant and is reachable on a reasonable basis during off hours in case of an emergency.
4. The attorney remains sufficiently flexible to accommodate exceptional needs and highly concentrated temporary periods of work.

D. Compensation

Associates

Alternative 1

The Firm determines associate salaries by class within a range. For associates on alternative schedules, the Firm will determine the salary that would be applicable if they were on a conventional schedule, and then apply a percentage multiplier. The multiplier will be equal to the

expected percent of the attorney's prior average annual billable hours and nonbillable contribution to the Firm, the bar, and the community.

Alternative 2

Compensation for associates on an alternative work schedule will be adjusted on a pro rata basis to reflect the specified reduction of their billable hours in comparison to the minimum required billable hours. However, associates on an alternative work schedule will continue to receive the full customary compensation for any matter that they originally generated. The monthly salary of associates on an alternative work schedule will be based on the expectation that the specified hours of work will be performed. Compensation for matters originally generated by associates on an alternative work schedule shall be calculated following the end of the calendar year, and paid on or before March 31st of the following year. Such compensation shall be based on fees actually collected by December 31st of the year preceding the year in which the compensation is paid.

Partners

Compensation for partners working on alternative schedules will be determined by the appropriate committee in the same manner as for other partners, taking into consideration productivity, billable and nonbillable hours worked, client origination and responsibility, supervisory and administrative duties, pro bono service, and other civic and bar activities. Then a percentage multiplier will be applied to determine the partners' draw. [For example, the multiplier will be equal to the expected percent of the partners' prior average billable hours and nonbillable contribution to the Firm.]

Voting and equity participation will not be affected by an alternative work schedule. Partners working on alternative schedules will continue to receive the standard partners' benefits package, provided that they maintain the minimum number of hours per week required by Firm insurance policies and retirement programs. [If retirement benefits are based on compensation, they will be proportionately reduced.]

Adjustments

Lawyers will be entitled to take time off at appropriate times to compensate for periods requiring more than the number of hours or amount of work specified in their schedules. If compensatory time is not feasible, an adjustment in compensation will be made for any substantial time commitment made in excess of the lawyer's schedule. However, monetary compensation should only be a temporary solution to an excessive work load. To meet the goals of this policy, the parties should work toward other solutions if excess work load is a consistent problem.

E. Nonbillable Responsibilities

Lawyers working on alternative schedules are expected to make a reduced but proportionate commitment to nonbillable activities such as continuing legal education, client development, firm administration, recruiting, pro bono service, and civic functions.

F. Work Assignments

Although lawyers working on alternative schedules cannot be expected to handle the same volume of matters as a full-time lawyer, they will be given opportunities to handle the same sort of matters, including work that assists professional growth and advancement. Lawyers on alternative schedules will receive assignments commensurate with their experience and expertise rather than a disproportionate share of routine matters.

G. Progression Towards Partnership

Progression towards partnership status shall not be affected if an associate works for the equivalent of one cumulative year or less on an alternative schedule. For example, an associate who works on an 80 percent schedule for five years and then returns to a full-time schedule will be treated as having worked for only one cumulative year on an alternative work schedule. Similarly, an associate may work on a two-thirds schedule for two years without being deferred for partnership consideration. An associate on an alternative schedule need not return to full-time status in order to be considered for partnership. However, taking a part-time schedule for an extended period may affect an associate's readiness for partnership status, since reduced experience may delay professional development. The extent of the delay, however, will depend upon the capabilities of the particular lawyer, with a presumption of a pro rata adjustment according to time spent on an alternative schedule.

H. Requests for Alternative Schedule Status

All requests for changes in work schedules should be submitted in writing to the [lawyer's department chair] [managing partner]. Requests should estimate the anticipated billable and nonbillable hours and should indicate the office schedule that the attorney expects to maintain. Attorneys should submit their requests two months in advance if the proposed schedule is for child-rearing or non-emergency purposes. Upon approval of a lawyer's alternative arrangement, the [department chair] [managing partner] shall be responsible for facilitating the success of the arrangement and the cooperation of other affected lawyers.

I. Alternative Schedule Advisor

The Firm shall also appoint an advisor to assist lawyers who are working on an alternative schedule or who are

requesting such an arrangement. The advisor's role will include providing suggestions for reducing expenses and reallocating work. The advisor will also assist lawyers in preparing their requests, and may facilitate the cooperation of other lawyers in making the alternative schedule program successful.

J. Emergencies

The parties shall agree on a system for handling messages and emergencies when a lawyer on an alternative schedule is out of the office. Arrangements should be made for contacting the attorney or for referring urgent matters to another lawyer.

K. Review of Alternative Schedule Arrangement

The work of lawyers on alternative schedules will be evaluated in accordance with the Firm's review process for full-time lawyers. In addition, the review process will include formal evaluations at six month intervals to determine whether the alternative arrangement is effective for all concerned. If the hours worked are substantially different from the specified schedule, if the lawyer's professional development is materially impeded, or if the arrangement is otherwise unsatisfactory to the lawyer, clients or colleagues, the parties will discuss strategies for addressing these problems.

ALTERNATIVE WORK SCHEDULES

Key Provisions	Philadelphia Bar (adopted 1999)	NY State Bar (prepared by NYSBA Comm. on Women in the Law 1995)	DC - WBA (published 1990)	Indiana State Bar (adopted 1994)	Equity Committee of the Law Society (published 1999)	SF Bar (adopted in 1990)	Minnesota Women Lawyers – Small/Medium Alt. Work Policies (Published Fall 2000)*	Minnesota Women Lawyers – Large Firm Alt. Work Policies (Published Fall 2000)*	ABA Commission on Women Policy (published 1990)
Who is Covered	Any attorney in good standing	Any attorney	Any attorney, including managers	Any attorney employed at firm for ____ years. (Firm to fill in blank)	Any attorney	Any attorney	Attorney who has worked with firm for at least 2 years full-time	Attorney who has worked with firm for at least 2 years full-time	Any attorney, but associate must have been employed by the firm for 1 year before becoming eligible
Written Proposal Required?	Yes	Yes	Yes	Yes	Yes – at least 2 mos. before alt. schedule begins	As much in advance as possible	Yes – at least 2 mos. in advance	Yes – at least 2 mos. in advance	Yes – 2 mos. in advance
Suggested Contents of Alternative Work Proposal	Proposal must be practical, workable by the firm as a whole and individual practice groups	Proposal must include reason for request	N/A	Firm will designate liaison to help attorney and firm decide arrangement	Should be as specific as possible and incl. hrs/days to be allocated as office time	N/A	Duration of arrangement, estimate of hours to be billed, hours in office	Duration of arrangement, estimate of hours to be billed, hours in office	Advisor to work with attorney seeking approval or renewal of schedule
Factors considered in granting request, reviewing schedule	Attorney must be in good standing	Attorney in good standing; client demands; attorney's practice area and present cases	Attorney must meet work responsibilities successfully	Schedule must serve attorney and client; must not burden other lawyers; must be economically feasible	General workability of proposal; workload coverage; situation in attorney's dept. Attorney must have flexibility, regular and predictable office hrs., and reasonable contact with office	Attorneys in good standing and if request can be reasonably handled by practice groups affected	Attorney's history with firm; firm needs; firm finances; transferability of attorney's work	Attorney's history with firm; firm needs; firm finances; transferability of attorney's work	Attorney works at least 50 percent of his/her prior annual hrs.; Attorney holds regular predictable office hrs.; is flexible and remains in contact with office
Attorney Required to Maintain Non-billable Duties?	Yes	Yes but responsibilities reduced proportionally with the reduction in billable hours	Yes – quantity to be agreed upon in advance	Yes at a percentage of the goal expected of all lawyers	Yes	Yes	Yes	Yes	Yes but reduced proportionate to reduced hours
Effect on Partnership Prospects?	No effect on partnership eligibility	May affect timing of partnership determination	May affect timing of partnership determination	Delays career progression	Affects timing of partnership determination but not eligibility	Affects timing of partnership determination but not actual determination	None unless arrangement exceeds 6 months	None unless arrangement exceeds 6 months	No effect unless part-time associate works for more than equivalent of 1 cumulative yr. on alternate schedule
Effect on Salary increases?	Salary prorated	Associate's salary prorated	Salary prorated with additional compensation for hours beyond schedule	Salary prorated	Salary prorated	Salary prorated	Salary prorated	Salary prorated	Salary prorated

Effect on Benefits?	Benefits prorated except that full health insurance benefits are available if economically feasible	No effect except that holidays and vacations are allotted on a prorated basis	Benefits, on a pro rata basis, in accordance with employer's policy for full-time attorneys	Firm shall continue to provide benefits package agreed upon by parties	N/A	Full health insurance coverage; other benefits provided on prorated basis	No effect unless insurance plan requires min. hour requirements and attorney fails to meet them	No effect	Full benefits package [or pro rata benefits package if firm so desires]
Periodic Review?	At least annually	First evaluation to occur 3 mos. after alt. schedule begins; Thereafter, review every 6 months	Attorney and management should meet on a regular basis	Yes, annually	Yes	At least annually	Attorney and management should meet on a regular basis	Attorney and management should meet on a regular basis	Every 6 months
Minimum or maximum period of alt. work arrangement?	No	No	No	No	No	No	No – in Firm's discretion to continue arrangement	No	No
Examples of Flexible Scheduling Options Offered?	Yes – Flextime, compressed work week, and telecommuting	Yes – Flextime, Flexiplace, Compressed Work Week, Caseload Sharing, and Reduced Caseload – reduced by 20 - 50%	Yes – Flextime, Compressed time, and Flexiplace	Yes – Flextime, Remote Work (telecommuting)	Yes – compressed work week; work-at-home arrangements	Yes – includes flextime, flexiplace	No	No	No
Part-Time Work Option offered?	Yes	Yes	Yes – incl. Slot Pooling in Govt Agencies (Employer divides job slots among attorneys)	Yes	Yes – includes job-sharing, reduced hrs. or specific cases	Yes	N/A	N/A	Yes
Job-sharing option offered?	Yes - Sharing offices, secretaries, salary, workload, and any other appropriate arrangement	No	Yes	Yes	Yes	Yes	N/A	N/A	Yes
Special Provisions for Part-Time Partners	N/A	The firm will consider billable hrs. compared to non-billable hrs., rainmaking, and administrative duties, in determining partner's compensation	Compensation based on same factors used for full-time partners; part-time partners entitled to full benefits; part-time partners should be able to participate fully in firm	No	No	No	No	No	Compensation based on formula using a percentage multiplier; Voting, unaffected; Benefits unaffected if partner maintains minimum hrs/wk required

* Minnesota Women Lawyers (MWL) published "The MWL Life Balance Resource Guide," which includes sample policies from various law firms (firm policies were anonymous). Because the information contained in each sample policy differed, the information contained in this chart is only a general sampling of the provisions in the policies included in the MWL Resource Guide. Information in the chart represents the majority practice of the sample policies to the extent that a majority practice was evident.



FAMILY LEAVE

P O L I C I E S



I. INTRODUCTION

The practice of law takes a serious toll on most lawyers' family lives and poses special difficulties for women. An effective family leave policy is one of the best ways for legal employers to address these problems. The adequacy of such a policy sends a powerful message about organizational values—about which lawyers an employer wants to recruit and retain, and what balance they can expect between their personal and professional lives.

A policy that covers only the initial medical disability

after childbirth sends the wrong signal. An effective policy should also attempt to provide lawyers of both sexes with a reasonable amount of time to care for a new child or an elderly or disabled family member or domestic partner and to make an effective transition back to the workplace. Such policies serve the interests of legal organizations as well as lawyers and their families. Research by the United States Census Bureau indicates that paid leave is positively correlated with employees' return to work.

II. FAMILY LEAVE PROVISIONS

A. The Tone of the Policy

One crucial objective of a family leave policy is to communicate an organization's priorities and commitments. Style as well as substance can convey that message. The introduction to the policy can be important in setting its tone. An effective introductory statement should stress the importance of assisting lawyers to meet family and medical needs, rather than the organization's need to comply with relevant federal and state law.

Wherever possible, the language in the policy should be positive rather than negative. Compare the approaches: "This policy is not binding on the firm, and can be changed at any time, at its sole discretion;" with "These guidelines may continue to be modified and developed as the firm continues to grow and change." Even where a policy is qualified, it should emphasize a supportive approach. For example, some policies provide that the availability of unpaid six-month leaves may sometimes be limited by staffing concerns, but that such leaves are a "desirable objective" that should be accommodated whenever feasible.

B. Types of Leave

Family leaves generally take three forms: (1) disability leaves, (2) paid caretaking leaves, and (3) unpaid caretaking leaves. Effective policies generally distinguish these three types of leave, which have different legal and policy

implications. Childbirth, like other medical conditions, is followed by a period of disability that varies according to each individual. Natural childbirth typically involves a disability period of about six to eight weeks; a caesarean birth may involve a longer disability period. The length of the disability portion of a family leave should be as long as individual needs dictate. Well-designed policies should also grant an additional leave following the period of disability in order to allow lawyers to meet crucial family needs and to adjust to new demands. This caretaking leave typically includes a period of paid coverage and a subsequent period of optional unpaid leave. A standard leave package might include 6 weeks of paid disability leave, 10 weeks of paid caretaking leave, and 2 months of unpaid caretaking leave.

1. Disability Leaves

The medical disability provisions of a family leave policy should mirror the firm's general disability policy, and should comply with applicable federal and state statutes. Under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e(k), as amended by the Pregnancy Discrimination Act of 1978, employers covered by the Act must treat disabilities relating to pregnancy and childbirth the same as other temporary disabilities. If, for example, an organization pays full salary benefits to a lawyer who suffers a heart attack, a new mother must also receive her full

salary for the disability period following childbirth. Although Title VII does not require a disability policy, the laws of an increasing number of states do.

Employers with over fifty employees are also subject to the federal Family and Medical Leave Act of 1993 (FMLA). It requires provision of an unpaid leave for at least 12 weeks for specified medical and caretaking needs, including the birth, adoption, foster care placement, or care of a child, and serious health conditions of employees or their spouses, children, or parents. The Act also requires employers to continue health benefits and to allow employees to return to the same or comparable jobs. 29 U.S.C. “2601-2654.

Since passage of the FMLA, some legal employers have developed a single comprehensive policy covering all family and medical leaves. Because the Commission’s focus and expertise involves gender and related family issues, this Manual does not prescribe a general disability policy. However, Appendix II sets forth a representative sample policy. Each employer should ensure that it is in compliance with applicable state and federal laws and court decisions in this area.

2. Paid Family Leaves

The caretaking provisions of a family leave policy should be available to both men and women. Title VII prohibits discrimination in the terms and conditions of employment on the basis of sex (42 U.S.C. “2000e-2a), and many states have similar statutes. To comply with these laws, employers must grant benefits in a sex-neutral manner. Some organizations therefore grant leaves to both male and female lawyers with specified family and medical needs. Other employers limit entitlement to “the primary caregiver” in a family.

The Commission recommends that all lawyers, not just primary caretakers, be eligible for family leaves. Most organizations find that the additional cost is not substantial, and that broader coverage encourages more fathers to become actively involved in childrearing even when they are not the primary caregiver. Encouraging equal family responsibility among men promotes equal opportunity for women and sends an important message about the organization’s commitment to balanced lives for lawyers of both sexes.

3. Unpaid Family Leaves

The unpaid portion of a family leave policy provides time for lawyers of both sexes to fulfill important commitments, such as making effective caretaking arrangements, actively assisting in a child’s early development, or meeting crucial needs of elderly or disabled family members or domestic partners. Providing this option serves organizational as well as individual interests. It increases the likelihood that lawyers with substantial family commitments will eventually return to their positions, instead of terminating their employment and later looking for a more family-friendly workplace.

Some employers worry about the staffing and coverage difficulties that might arise if all lawyers took advantage of the maximum unpaid leave opportunities. In practice, this risk has not materialized. For a variety of financial and career-related reasons, most lawyers do not take extended unpaid leaves. Accommodating attorneys who do want such opportunities is typically less expensive than recruiting and training replacements.

As a general matter, unpaid parental leaves will follow immediately after paid leave. However, well-designed policies should permit the deferral of unpaid leave either for an unlimited period or for a defined interval, such as the first three years of the child’s life. This option enables parents to cope with unexpected demands or difficulties, such as a severe illness, or a breakdown of childcare arrangements.

C. Transitional Work Arrangements

For many lawyers, a period on a reduced or flexible schedule following a family leave is also critical. Caretaking arrangements need time to be tested and modified, and provisions for emergencies need to be developed. Such scheduling arrangements should be consistent with the guidelines set forth in an organization’s alternative work policy, except that entitlement for some limited period should normally be presumed. Usually that period will not exceed 6 months. Since lawyers and their employers will have time before or during the leave to plan for this relatively brief period, it should generally not present undue burdens. More extended needs should be handled under the organization’s alternative work arrangement policy.

III. TERMS AND PROCEDURES

A. Approval Procedures

Lawyers should provide reasonable advance notice in writing of an intent to take family leave. The notice should estimate a specific return date, and if this estimate changes, the lawyer should communicate that fact as soon as possible.

A family leave policy should include a discretionary approval process only for leaves beyond the specified time periods. The policy should identify criteria for any such discretionary decision. Examples include: the needs of the lawyer and the lawyer's family, the department's workload, the concerns of clients, the transferability of the lawyer's caseload, and the time available to plan for the demands of practice.

B. Transitions

A family leave policy should address lawyers' responsibilities in the transitions before and after the leave. For example, prior to the leave, the policy might require a "leave memorandum" to the lawyer's department head and to the colleagues who will be handling specific matters during the leave period. The memorandum would provide information such as the background and current status of each matter requiring coverage in the lawyer's absence; the names, addresses, and phone numbers of the clients and other crucial parties involved in each matter; and the location of files. The policy also might require that before lawyers begin their leaves, they must review all files to insure that they are in good order. Finally, the policy might provide that, prior to departure, lawyers must schedule a meeting with coworkers taking over their matters to address any questions or concerns. The time frame for completing these pre-leave tasks should be spelled out, and should be designed to provide information that is current when the leave begins.

The policy should also provide a process for smoothly reintegrating the lawyer after the leave. To that end, the organization might request that the lawyer send a reminder memo to the lawyer's department head three weeks before the anticipated return indicating the exact date of the return and, if applicable, notice of any alternative schedule arrangement.

C. Benefits

The Family and Medical Leave Act requires covered employers to maintain medical insurance during the guaranteed 12-week period of unpaid leave, and the Commission recommends that all employers maintain medical coverage through all phases of the leave. Where possible, other benefits should be continued as well. The cost will generally be quite modest in comparison to the positive impact on loyalty and morale. If an organization determines not to maintain full benefits, lawyers should have an opportunity to maintain coverage at their own expense, and this option should be spelled out in the policy. Vacation benefits generally should accrue during the paid, but not the unpaid, portion of the leave.

D. Promotion and Progression Toward Partnership

Lawyers who take a standard paid and unpaid family leave should not lose opportunities for advancement or be delayed in their progression toward partnership. For the same reasons detailed in the materials on alternative work arrangements, it does not serve the interests of lawyers or their employers to penalize individuals who need temporary accommodation of crucial family and medical needs. Promotion should depend on lawyers' performance and potential. Their exercise of leave options should not be taken as a signal of diminished commitment.

IV. ORGANIZATIONAL SUPPORT

The most well crafted policy cannot succeed without the full support of an organization's leadership. Messages about workplace values are communicated through informal practices as well as formal policies. Employers need to demonstrate that support for balanced lives in general, and family leave in particular, is an organizational priority. Supervisory lawyers should avoid any implication that family leave is a form of vacation, or that lawyers who take the full period are not fully committed to their careers.

The attitudes of coworkers are also crucial to the success of a family leave policy. The news of a pregnancy or adoption should be greeted in a positive manner, and colleagues should assume, unless otherwise informed, that lawyers will return to work at the conclusion of the leave

period. When lawyers do return, the organization's leadership should take active steps to ensure that collegial attitudes will support a successful reintegration into the workplace. New mothers often report that after they come back from leave, their commitment is questioned and their opportunities for high-quality assignments decline. The result is to compromise their chances for advancement, which in turn may adversely affect retention and recruitment efforts. To help prevent such patterns, many employers have found it useful to provide educational materials and training programs that address family leaves. Bottom-up performance reviews can also provide a constructive occasion for returning lawyers to express concerns about work assignments and related treatment by supervising lawyers.

V. PROFESSIONAL OBLIGATIONS

Lawyers on leave remain professionals. Obligations to clients and colleagues may require some attention when lawyers are away from the office. Lawyers should make every effort to accommodate crucial needs. By the same token, organizations should make every effort to address workplace demands in ways that honor the terms of lawyers' leaves.

Some forms of communication from their employer may be welcome to lawyers on leave. Periodic contact can

remind lawyers that they remain an important part of the organization, and that their welfare is of concern to coworkers. Such communication, however, should be made in a manner that will not convey pressure on lawyers to assume major work obligations while on leave or to cut short its duration. And some lawyers may prefer to avoid contact except in emergencies. How to handle communication while lawyers are out of the office should be discussed during the planning process for their leaves.

VI. CONCLUSION

The vast majority of lawyers will encounter significant family and medical needs at some point in their professional lives. Employers' support in addressing these needs is critical to attracting and retaining a productive workforce. In an increasingly competitive legal market,

effective family-related policies will serve the interests of both employers and employees. Making these policies a priority sends an important message about an organization's human values and its commitment to balanced lives.

FAMILY LEAVE: SAMPLE POLICY

PREFACE

The following sample policy should serve as a guideline for developing effective policies on alternative work arrangements. In drafting such policies, lawyers should take into consideration the particular characteristics and

culture of their workplace. This sample policy is intended as a useful starting point for institutionalizing effective alternative work arrangements.

Family Leave Policy

A. Introduction

The Firm recognizes that many lawyers have substantial family commitments. The needs of newborn or newly adopted children or elderly or disabled family members may call for a temporary leave from workplace obligations. This period of time can be important for the physical and psychological well-being of lawyers and their families. To address these needs, the Firm is committed to providing appropriate leave arrangements.

B. Summary of Leave Portions

This policy is divided into three periods: (1) Disability Leaves, (2) Paid Family Leaves, and (3) Unpaid Family Leaves. The medical disability portion of this policy is applicable only to lawyers who have given birth. The care-taking portions of the policy are available to lawyers of either sex upon the birth or adoption of a child, or to those responding to other family needs.

C. Disability Leaves

Attorneys medically disabled due to pregnancy, childbirth, and/or complications arising from these conditions will be treated the same for purposes of compensation, benefits, and advancement toward partnership as attorneys disabled due to other causes. The Firm will presume a disability period of 6 weeks for lawyers who give birth, with the understanding that medical complications may extend this disability period.

D. Paid Family Leaves

A paid care-taking leave period of 10 weeks, in addition to any period of medical disability, will be available to attorneys following the birth or adoption of a child, or the needs of another family member or domestic partner. This paid leave period should begin after the expiration of any disability leave period. The paid childcare leave is available to both mothers and fathers.

E. Unpaid Family Leaves

In addition to paid disability and/or paid family leave, lawyers may elect an additional 3 months of unpaid family leave. A request for unpaid child care leave normally would be made within a 12 month period following the birth or adoption of a child. However, requests for family leave can be made at any time that significant needs arise. If lawyers require an unpaid leave in excess of 6 months, or wish to use vacation time to extend their leaves, the Firm will attempt to honor such requests if adequate arrangements can be made.

F. Approval Procedures

Attorneys must notify the Firm in writing in advance of their anticipated family leave, absent a medical emergency or unexpected adoption. Attorneys should inform [specify the appropriate individual or committee] of the anticipated length of leave, approximate starting date, and estimated date of return. Written notice should be submitted at least 2 months prior to the leave period whenever possible.

The Firm will normally approve leaves that do not exceed 6 months. Requests for longer leaves will be considered on a case-by-case basis, depending on factors such as the needs of the lawyer and the lawyer's family, the department's workload, the demands of clients, and the availability of other qualified lawyers. Decisions concerning discretionary leaves will be made by [specify individual or committee].

G. Transitions Prior to Leave and Upon Return to Work

At least one month prior to a family leave, except in cases of unexpected urgent circumstances, attorneys must meet with the relevant supervisor to discuss plans for reallocating their work. The attorneys must also prepare memoranda describing the background and status of matters that will

need to be handled in their absence; contact information for clients, lawyers, and other individuals who may need to be reached; and the location of relevant files. At least two weeks prior to their departures, except in cases of unexpected urgent circumstances, attorneys must meet with each lawyer taking over their work to review the status of each matter and to address questions or concerns.

At least two weeks before returning to work, attorneys should circulate memoranda to the relevant supervisors and colleagues indicating the scheduled date of return and, if applicable, notice about their alternative work schedule upon return to the firm.

H. Impact on Employee Benefits and Progression Toward Partnership

All employee benefits [specify] shall be maintained during family leaves of up to 6 months. Vacation benefits will continue to accrue throughout the paid leave period, but not during the unpaid leave period.

Lawyers who take the standard paid and unpaid leaves provided in this policy will not be delayed in their progression toward partnership. A family leave in excess of 6 months may affect compensation, benefits, and the

time at which a lawyer is considered for partnership. The impact of an extended parental leave will be determined by [specify the decision making body] at the time when such a leave is requested.

I. Return to a Reduced Work Schedule

A lawyer returning to the Firm after a family leave may choose to work on a reduced or flexible schedule for a period of up to 6 months immediately following the leave period. Adjustments in compensation and benefits for this period will be made by [specify the appropriate decision-making body] in accordance with the Firm's alternative work schedule policy.

This temporary schedule is designed to assist lawyers in making an effective transition back into the workplace after a family leave. Lawyers interested in modifying their hours for a more extended period of time should consult the firm's alternative work schedule policy.

Conclusion

These guidelines, procedures, and benefits will continue to be reviewed on an ongoing basis and may be modified in light of changing needs and circumstances.

FAMILY LEAVE

Key Provisions	Philadelphia Bar – Disability as a Result of Pregnancy, Childbirth, and Related Medical Conditions (adopted by Bar 1999)	Philadelphia Bar – Childcare Leave (adopted by Bar 1999)	Philadelphia Bar – Family Care Leave (adopted by Bar 1999)	DC - WBA Family & Medical Leave (published by Bar 1991)	Maine State Bar – Child Care Leave (Adopted by Bar 1986)	NY State Bar – Childbirth & Parenting Leave (Adopted by Bar 1990)	Minnesota Women Lawyers – Small/Medium Firm Parental Leave Policies (Published Fall 2000)*	Minnesota Women Lawyers – Large Firm Parental Leave Policies (Published Fall 2000)*	ABA Commission on Women Policy (published 1990)
Eligibility	Any female attorney	Any attorney, male or female	Every attorney in good standing, regardless of seniority	Employees that have been employed with firm for at least 1 year for at least 1000 hrs. during the immediately preceding year	Women attorneys are entitled to childbirth leave; Every attorney is entitled to paid and unpaid family leave and part-time work	Women attorneys are entitled to childbirth leave; Every attorney is eligible for paid and unpaid family leave	Every attorney	Associates who have worked at least _ the hours of a full-time position in the last year	Women attorneys are entitled to childbirth leave; Every attorney is eligible for paid and unpaid leave
Compensation	Paid	2 wks. paid and any additional family leave unpaid	Unpaid	Paid. If firm unable to provide full-paid leave, compensation may diminish as the length of leave increases	Disability leave and period of family leave to be determined by firm is paid; Extended leave may be unpaid	Childbirth and 6 weeks of family leave paid; Extended leave unpaid	6 weeks of disability leave is paid; Additional leave may be unpaid	6 weeks of disability leave is paid; Additional leave may be unpaid	Disability and 10 weeks of family leave paid; Extended leave unpaid
Advance Notice Required?	Yes	Not required but some firms may follow FMLA, which is 30 days or “as is practicable”	Not required but some firms may follow FMLA, which is 30 days or “as is practicable”	Not required but attorney should make reasonable efforts to give notice	90 days if feasible; For part-time work, 30 days, if feasible	90 days, if feasible	4 weeks or as soon as practicable	30 days	2 months, in writing
Continuous Leave required?	No	No but must be taken immediately following arrival of child	No	No	No	No	No	No but entire family leave must be completed within 1 year of start of leave	No but family leave must follow birth or adoption; Should commence after disability leave expires, or during first 3 mos. of adoption; Request for unpaid leave should be made within 1 year of birth or adoption
Attorney’s Return to Employment Required?	No	No unless provision requiring return is included in a written policy and discussed with attorney	No unless provision making right to leave contingent on intent to return is included in a written policy and discussed with attorney	No	Yes	Yes	No	No	No

Key Provisions	Philadelphia Bar – Disability as a Result of Pregnancy, Childbirth, and Related Medical Conditions (adopted by Bar 1999)	Philadelphia Bar – Childcare Leave (adopted by Bar 1999)	Philadelphia Bar – Family Care Leave (adopted by Bar 1999)	DC - WBA Family & Medical Leave (published by Bar 1991)	Maine State Bar – Child Care Leave (Adopted by Bar 1986)	NY State Bar – Childbirth & Parenting Leave (Adopted by Bar 1990)	Minnesota Women Lawyers – Small/Medium Firm Parental Leave Policies (Published Fall 2000)*	Minnesota Women Lawyers – Large Firm Parental Leave Policies (Published Fall 2000)*	ABA Commission on Women Policy (published 1990)
Factors considered or required for granting or denying leave	Disability must be related to pregnancy, childbirth	Purpose must be for birth, adoption or foster care of child; Approval given unless it will adversely affect firm as a whole, or work of dept. or practice group	Purpose must be to care for attorney's own health, attorney's child, spouse, domestic partner, parent or member of household who is ill	Medical Leave: Attorney must have serious health condition and unable to perform his/her normal job function Family Leave: Purpose of leave must be for birth, adoption or foster care of child or serious health condition of family member	Criteria: Seniority, effect of leave on colleagues, leaves already granted to other attorneys for the same period, nature of the work performed, and length of leave requested	Childbirth leave must be for purposes related to pregnancy; Family leave must be for child-rearing purposes; Criteria: Needs of attorney and needs of firm	Childbirth leave must be for purposes related to pregnancy; Family leave must be for child-rearing purposes	Childbirth leave must be for purposes related to pregnancy; Family leave must be for child-rearing purposes	If length of leave requested exceeds 6 mos., firm shall consider needs of attorney, dept. workload, clients, unique skills of lawyer, timing
Option to take additional leave?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Duration	Leave may begin 2 wks. prior to anticipated birth and 12 weeks after; Some firms may opt for shorter period	Paid Leave: 2 wks. paid childcare leave; 14 wks. of total paid disability and childcare leave; 8 wks. allowed for adoption Unpaid Leave: Up to 9 mos.	Up to 12 wks. and leave beyond 12 wks. at discretion of firm decision-maker or managing committee if difficulties arise	Family Leave: 16 wks. of family leave over 24-month period Medical Leave: 16 wks. of medical leave during any 24-month period	Childbirth leave: 6 wks.; Family leave: to be established by each firm	Paid Childbirth Leave: Determined case-by-case like other disabilities Family Leave: 6 wks. paid and one year of total paid/unpaid leave	6 wks. paid childbirth leave; 6 wks. paid family leave; additional unpaid leave not to exceed 26 wks	6 wks. disability leave and 6 wks. family leave	Disability leave: 6 wks. Paid child care leave: 10 wks. Unpaid child care leave: Additional 3 months
Certification Required?	No unless leave is in excess of the allotted number of weeks granted by firm in policy	N/A	N/A	For medical leave: Yes For family leave: Not required but if firm requires one, it need only indicate expected duration of family member's condition	No unless attorney is requesting extended leave period related to childbirth	N/A	No unless disability leave exceeds 6 weeks	No unless disability leave exceeds 6 weeks	N/A

Effect on Partnership Prospects?	Same effect as any other medical disability	Paid Leave: No effect Unpaid Leave: May affect timing but not result	No effect unless leave exceeds traditional 12-wk. period	None	Paid Leave: No effect Extended Unpaid Leave: Affects timing Part-Time Work: Affects timing	Paid Leave: No effect Unpaid Leave: If paid and unpaid leave together exceeds 6 mos., affects timing	Paid Leave: No effect Unpaid Leave: Affects timing	Paid Leave: No effect Unpaid Leave: Affects timing	Any leave in excess of 6 mos. will likely affect timing
Effect on Salary Increases?	Same effect as any other medical disability	Paid and Unpaid Leave: No effect	N/A	No effect	Paid, Unpaid: No effect Part-Time Work: Salary increases prorated	No effect	No effect	No effect	Any leave in excess of 6 mos. will likely affect salary
Benefits	Depends on benefits program of the firm; Firms with no general disability benefits program may wish to offer family leave if it is economically feasible	Paid Leave: No effect Unpaid Leave: During unpaid leave, firm shall maintain attorney's health insurance benefits; Other benefits maintained at the firm's discretion; Some firms may require employee to pay required premiums	No effect unless extended leave is for a long period, in which case some firms may require employee to pay required premiums	Health insurance coverage continued during leave; No effect on benefits accrued before leave began	Paid Leave: No effect Extended Unpaid Leave: Attorney pays for retention of life, health, and disability insurance at group rates Part-Time Work: All benefits except medical prorated	Childbirth & Family Leave: No effect Unpaid Leave: No effect except that vacation time shall not accrue during this time	No effect	Paid leave unaffected but during period of unpaid leave, attorney pays insurance premiums	Benefits affected if leave is over 6 mos.; Vacation benefits accrue during paid leave but not unpaid leave
Reinstatement to former position guaranteed?	Yes	Yes	Reinstatement may be denied if 1) economically unfeasible for the firm or 2) employees among the highest paid in firm	Yes, but firm and employee may agree on alternative job if employee's serious health condition prevents performance of old job	Yes	Yes, but firm and attorney may agree on part-time work arrangement	Yes	Yes	Yes, but firm and attorney may agree on part-time work arrangement for 6 mos. following leave period
Attorney's Responsibilities Prior to and after Leave period	"Departure memo" outlining attorney's responsibilities suggested	"Departure memo" suggested but not required	N/A	Employee shall take reasonable steps not to disrupt firm operations	N/A	N/A	Written family leave plan, incl. estimated length of leave, start date, return date	Written leave request	"Departure memo," mtg. with lawyer(s) handling attorney's cases and return memo to dept. head

* Minnesota Women Lawyers (MWL) published "The MWL Life Balance Resource Guide," which includes sample policies from various law firms (firm policies were anonymous). Because the information contained in each sample policy differed, the information contained in this chart is only a general sampling of the provisions in the policies included in the MWL Resource Guide. Information in the chart represents the majority practice of the sample policies to the extent that a clear majority was evident.



MEDICAL LEAVE

P O L I C Y



APPENDIX I

MEDICAL LEAVE POLICY

This Appendix consists of a sample family leave policy from Minnesota Women Lawyers (MWL), The MWL Life Balance Resource Guide: Policies, Ideas & Strategies

for Parental Leave & Alternative Work Arrangements (Fall 2000). To honor confidentiality concerns, the policy is anonymous.

FAMILY AND MEDICAL LEAVE

Eligibility: All associates who have 1) been employed by the Firm for at least 12 months and 2) worked at least 1,250 hours for the Firm during the previous 12 months.

Purpose: In order to comply with the Family and Medical Leave Act (FMLA), which became effective August 5, 1993, [firm name] provides associates with time off to care for a newborn or a newly adopted child, a seriously ill family member, or for an associate's own serious illness. (Note: Par is adjusted by 7.2 hours per day for each day of time taken as Family and Medical Leave.)

Policy: An eligible associate may take up to twelve work weeks of leave during a rolling twelve month period counting backwards from the date on which the associate begins the leave. Time off due to a parental leave must be consecutive. Time off due to a serious health condition may be part-time or intermittent if certified as medically necessary.

Types of FMLA Leave:

- Childbirth and to care for a child within the first twelve months after childbirth.
- Placement of a child with the associate for adoption or foster care within the first twelve months of placement. In general, a "child" is defined as a biological, adopted, or foster child, a stepchild, a legal ward, or the child of a person taking place of a parent, who is under 18, or unable to take care of him or herself due to mental or physical disability.
- To care for the associate's spouse, child, or parent who has a serious health condition. The associate may take this leave intermittently or on a reduced time basis (e.g., by working fewer days in a week or by working fewer hours in a day), but only if such a schedule is

needed for medical reasons. The associate may be required to provide one or more certifications from the health care provider about the family member's condition, including certification from the provider that the associate is needed to care for the family member and an estimate of the time needed. For planned medical treatment, the associate will be expected to schedule the treatment so as to create minimum disruption for the employer.

- To care for an associate's own serious health condition, where the associate is unable to perform his or her job. The associate may take this leave intermittently or on a reduced time basis if medically necessary to do so. The associate may be required to provide one or more certifications from the health care provider about the condition including certification that the associate is unable to perform the functions of his or her job. For planned medical treatment, the associate will be expected to schedule the treatment so as to create minimum disruption for the employer.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility;
- Any period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
- Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of

incapacity of more than three calendar days, and for prenatal care.

“Health care provider” means:

- Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices; or
- Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; or,
- Nurse practitioners and nurse-midwives authorized to practice, and performing within the scope of their practice, under state law; or
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

Requesting a FMLA Leave:

To request a FMLA leave, the associate must:

1. Notify and get preliminary approval from his or her supervisor for a FMLA leave.
2. Submit a written request to the Human Resources Administrator 30 days in advance of the leave if the need is foreseeable. The request must state the reason for the leave and the date the associate wishes to begin and end the leave of absence.
3. Contact the Benefits Administrator regarding disability benefits and continuation of coverage while on leave.

Each case will be reviewed individually. The Associate Committee chairperson and the Director of Human Resources will make the final decision. The Firm will comply with all applicable legal requirements. You should consult the Benefits Administrator for further information.

When an associate takes a leave of absence, their next compensation increase is delayed beyond the regular effective date of their increase for the same amount of time they were on leave.

At the end of a FMLA leave, it is the Firm’s intent to

reinstate the associate to the same or an equivalent position. If the associate is disabled and therefore unable to return to work at the end of the leave of absence, the associate’s rights will then be governed by the general disability and leave of absence policies.

In order to ensure continuation of coverage during a FMLA leave, payments normally deducted from the associate’s paycheck such as medical insurance, life insurance, dental insurance, qualified plan loans, and/or short-term disability insurance will continue to be due from the associate on a timely basis. If the associate chooses to cancel insurance coverage while on a leave to avoid making payments, the associate’s coverage will lapse, but the associate may elect reinstatement of coverage upon his/her return to work. With respect to medical premiums and contributions to the medical expense reimbursement account, the associate may have the opportunity to make those payments on a pre-tax basis through the cafeteria plan or on an after-tax basis. More specific guidance regarding the continuation of benefits during an FMLA leave will be provided to the associate when he or she requests the leave.

If an associate’s last day of work before a leave of absence begins or the first day of work on return from a leave falls on either side of a holiday, the associate will be paid for that holiday.

Compensation During a FMLA Leave Due to Employee’s Own Serious Health Condition:

Short-term disability benefits will begin on the first day of a qualified, approved disability. To receive these benefits, the associate must contact the Benefits Administrator. If the associate is still disabled when short-term disability benefits expire and, prior to the leave, was a full-time associate, he or she may apply for benefits under the long-term disability policy.

Enforcement Rights:

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

FMLA is enforced, including investigation of complaints, by the U.S. Labor Department’s Employment Standards Administration, Wage and Hour Division.



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