

# THE BALANCE BEAM

A Newsletter for Members of New York ***Flex-Time Lawyers***  
Fall 2002 – Spring 2003 Season

## ***Tips on Drafting a Flex-Time and Reduced-Time Policy – and Negotiating The Right Arrangement For You***

*By Deborah Epstein Henry*



*If you are drafting a flexible and reduced hours policy or negotiating a flex-time or reduced-time arrangement, there are many important factors to consider. In this article, I highlight areas that should be contemplated.<sup>1</sup>*

Many employers are considering how to retain flex-time and reduced-time lawyers, but are frustrated by drafting a policy. At the same time, many flex-time and reduced-time lawyers are struggling to negotiate an arrangement that is a win-win for them and their employers. Experience shows that the same factors that firms must consider in drafting their policies are ones a lawyer negotiating a flexible or reduced hours arrangement should contemplate if no policy exists. Below I highlight general guidelines that can be specifically

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<sup>1</sup> Helpful sources for writing this piece include the 2002 report, “Balanced Hours: Effective Part-Time Policies for Washington Law Firms: The Project for Attorney Retention,” and the 2001 report of the American Bar Association Commission on Women in the Profession, “Balanced Lives.” See the Resources section of this newsletter to find these sources.

tailored to individuals and places of employment. Although certain suggestions pertain exclusively to law firms, many of the suggestions are universally applicable.

### **Definitions:**

- Reduced Schedule – working less than a full-time schedule with either a percentage reduction of billable hours or fewer days than five scheduled to be in the office.
- Flexible Schedule – working a full-time schedule with some of the work scheduled to occur outside the office.

### **Administration:**

- Write the policy broadly so that female and male lawyers are eligible for reasons other than child care;
- Avoid making arbitrary determinations on the number of attorneys eligible;
- Avoid general limits on duration of flexible and reduced schedules – individual assessments work better;
- Publicize the written policy on the company intranet or via other channels – foster openness, build support, allow lawyers to plan their future;
- Provide a range of options – telecommute, job share, reduced hours (done by % of billable

- hours or fewer days a week), compressed hours, flexible hours;
- Allow for weekly, monthly, or seasonal schedule adjustments;
  - Outline work expectations, including travel, of lawyers working flex and reduced hours;
  - Provide guidelines for request and approval of a flexible- and reduced-hours schedule;
  - Designate a lawyer or administrator to review requests for flexible and reduced schedules and oversee lawyers working such schedules;
  - Periodically review the success of the flexible- and reduced-hours program. Are lawyers able to stay within their billable hours target? Is retention improving? Are clients satisfied?;
  - Provide performance reviews using the same criteria as full-time lawyers and include feedback about the success of the flex- or reduced-hours schedule;
  - Ensure communication that allows clients and colleagues to reach flex- or reduced-hours lawyers when necessary, when they are not in the office;
  - Emphasize mutual flexibility. The attorney makes herself available in crises and is responsive when matters arise, and the employer respects the flex- or reduced-hours schedule when matters are not pressing;
  - Advise secretaries about how to handle communications when a flex- or reduced-hours lawyer is outside the office;
  - Ensure that lawyers working a flex- or reduced-hours schedule be networked to the office and provide technological support;

- Require reduced but proportionate commitment to non-billable activities for reduced-hours lawyers;
- Minimize colleague resentment by having flex- and reduced-hours attorneys cover for each other, when feasible, during regular weeks and maternity leaves;
- Continue providing high quality assignments and client contact to reduced-hours lawyers – reduce the *amount* of work, not the quality of work assigned; and,
- Outline the process of returning to full-time status.

### **Compensation for Associates and Counsel**

- Adjust pay as a temporary solution when reduced-hours lawyers work significantly in excess of agreed hours;
- Ensure full employer-paid benefits for lawyers working in excess of 60%, e.g., medical insurance, disability insurance, life insurance, retirement plans, vacation and bar dues;
- Compensate flex-time associates and counsel the same as full-time colleagues, and compensate reduced-hours associates and counsel the same as their full-time colleagues, pro-rata;
- Compensate reduced-hours lawyers for business origination at full rates with no pro-rata adjustment.

### Compensation, Promotion and Partnership

- Provide opportunities for flex- and reduced-hours lawyers' non-partnership promotion as well as partnership promotion;
- Encourage flex- and reduced-hours lawyers' progression to partnership. Some firms have a slower progression to partnership on a pro-rata basis, others base it on professional development. Regardless, a firm should outline its policy and the effect, if any, a flex- or reduced-hours schedule has on promotion;
- Recognize that some flex- and reduced-hours lawyers elect to go off partnership track. Those lawyers should be able to return to the track and have the time worked on a flex- or reduced-hours schedule count towards progression to partnership;
- Compensate flex-time partners using the same methodology as is used to compensate full-time partners;
- Compensate reduced-hours partners using the same methodology as is used to compensate full-time partners but adjust compensation pro-rata according to hours worked;
- Compensate reduced-hours partners for business origination at full rates with no pro-rata adjustment;
- Allow flex- and reduced-hours partners to be equity partners and do not relegate to non-participating, non-equity status because of their schedule;

- Entitle flex- and reduced-hours partners the right to vote on firm matters as full-time partners;
- Address benefits for reduced-hours partners and specify any benefit provisions that differ from full-time partners;
- Revise any policy requiring a lawyer to practice full-time to be a partner or to work full-time for a period of time before being eligible for partner; and,
- Amend partnership agreements to explain the process for approval and existence of flex- and reduced-hours partner status.

### Resources<sup>2</sup>

What follows are some helpful resources addressing the issues that arise with flex- and reduced work schedules for lawyers.

- ✓ National Association of Law Placement statistics and press release regarding the availability and use of part-time schedules for law firms. <http://www.nalp.org/nalpresearch/pt01summ.htm> and, [http://www.nalp.org/press/p\\_t2001.htm](http://www.nalp.org/press/p_t2001.htm) (2001).
- ✓ Balanced Lives: Changing the Culture of Legal Practice, by Deborah L. Rhode (ABA Commission on Women in the Profession). <http://womenlaw.stanford.edu/balanced.lives.pdf> (2001).

<sup>2</sup> This newsletter does not endorse statements made in the links provided. It refers them to the members as helpful resources for reference.

- ✓ Project for Attorney Retention, an initiative of The Program on Gender, Work and Family of American University Washington College of Law.  
<http://www.pardc.org>
- ✓ More Than Part-Time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment and Success of Women Attorneys in Law Firms, Report of Employment Issues Committee of the Women's Bar Association of Massachusetts.  
<http://www.womensbar.org/WB/A/part-timestudydoc.DOC> (2000).
- ✓ Facing The Grail: Confronting the Cost of Work-Family Imbalance, Report of the Boston Bar Association Task Force on Professional Challenges and Family Needs.  
<http://www.bostonbar.org/prs/workfamilychallenges.htm> (1999).
- ✓ Resolution of the Board of Governors of the Philadelphia Bar Association Endorsing Model Employer Policies 1999 for Parenting Lawyers (Alternative Work Arrangements Model Policy 4).  
[http://www.philabar.org/member/governance/mp\\_parent4.asp](http://www.philabar.org/member/governance/mp_parent4.asp) (1999).
- ✓ Report of the Task Force on Lawyers' Quality of Life (Association of the Bar of the City of New York).  
<http://www.abcnyc.org/taskforce.html> (1996).

- ✓ Report and Sample Policy on Alternative Work Arrangements, 1995 (New York).  
<http://womenlaw.stanford.edu/AltWork.htm> (1995).

### ***The New York Wrap-Up***

***Flex-Time Lawyers*** launched its New York chapter in September 2002 at Skadden, Arps, Slate, Meagher & Flom LLP, with nearly 150 attendees. It held ten meetings during the 2002-2003 season, which ended in June 2003. Meetings were also hosted by Chadbourne & Parke; Schulte, Roth; Debevoise & Plimpton; Cleary, Gottlieb; Willkie, Farr; Shearman & Sterling; White & Case; and, Patterson, Belknap.

Guest speakers in the first season included:

- Joan Williams, one of the top researchers in the country on issues relating to flexible and reduced schedules and women in the law;
- Sylvia Ann Hewlett, author of, most recently, *Creating a Life*, the book that spawned a national discussion about the choices professional women confront between work and life;
- The Honorable Miriam Goldman Cedarbaum, a senior judge in the Southern District of New York who discussed a fifty year retrospective of women in the law since her 1953 graduation from law school; and,

- Lawyers from eleven other employers who participated in panel discussions.

In its first season, the New York chapter garnered over 100 members, including law firm corporate members, with a mailing list of over 500. Membership is comprised of law firm, in-house, solo practitioner, and non-profit lawyers as well as legal recruiters, legal administrators, accountants, lawyers seeking to re-enter the job force, and others looking for a work/life resource in the law. The press covered the launch of the New York chapter, including the *New York Law Journal*, *Newsday*, *The Scarsdale Inquirer*, and *The Southampton Press*.

### Upcoming Meetings

**Wednesday, September 17, 2003, 12:30 p.m., Wachtell, Lipton, Rosen & Katz**, 51 West 52nd Street (Corner of 52nd Street and 6th Avenue), 33rd Floor, New York, NY. **Topic:** The Billable Hour Bully. **Note that the date of this meeting was changed due to a scheduling conflict.**

**Thursday, October 16, 2003, 12:30 p.m., Bernstein Investment Research and Management**, 1345 Avenue of the Americas (6th Avenue between 54th and 55th Streets), 41st Floor, New York, NY. **Topic:** Your Financial Planning In Turbulent Times.

### Flexible Feedback

**Flex-Time Lawyers'** members should feel free to give feedback about the meetings and suggestions for improvement. This may include topic, speaker or format suggestions as well as any other constructive input. E-mail your comments or suggestions to: [dehenry@flextimelawyers.com](mailto:dehenry@flextimelawyers.com)

Thank you for your interest and support of **Flex-Time Lawyers**. Enjoy your summer. I look forward to seeing you back on September 17.

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