

"Flex" Firm Muscle

Initiatives promote work/life balance.

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New York Law Journal

October 17, 2011

It is no secret that law firms invest tremendous resources to recruit the best and the brightest talent from the country's top law schools. And during the past few decades, some law firms have upped their investment to build extensive talent development frameworks to train and mentor the lawyers they worked so hard to recruit. But as companies outside the legal realm rapidly expand their flexibility offerings, how much longer will law firms wait before fully adopting and embracing the same types of flexibility programs for their lawyers?

We've all heard the story. Law firms are, by their very nature, client and service-driven. After all, doctors can't leave their patients bleeding to death in the emergency room while they enjoy a "flex day," so why should lawyers be any different? Clients, rightfully so, have an expectation that their needs will be met regardless of what time of day it is, or what day of the year it is. Can these client needs be seamlessly met by law firms that have adopted a comprehensive flexibility model?

The fact is, many clients are getting awfully tired of watching their legal teams get disrupted when the law firm lawyer they've grown to depend upon leaves the firm in search of better work/life effectiveness—the ability to be effective at work and outside of work.¹ And this push toward flexibility is not just client-driven. Associates and counsel are, each year, becoming less and less willing to sacrifice all other parts of their lives to maintain that 24/7, 365 days a year availability to their clients. It does seem to be a bit of a stretch for law firms to say that one midlevel or junior associate cannot cover his or her colleague if an emergency comes up—after all, doctors are making life or death decisions and they traditionally share "call coverage," don't they?

A desire for work/life effectiveness has long been associated with working mothers. But it is no longer just a "mommy issue." To the contrary, the 80 million "millennials" from Generation Y—Americans born between 1980 and 2000—are much less willing to sacrifice for their careers the

same way that their predecessors did.² They do not place income and status as the most important things in life and they are willing to make financial trade-offs to have a life outside of the office.³ Like the 46 million Generation X members (born between 1965 and 1980), Generation Y members are non-conformist and have much less loyalty to institutions than did earlier generations.⁴ Many law firms also are experiencing a wave of partners (many of whom are Baby Boomers impacted by the economic downturn and dwindling 401(k) plans) who want to ease into retirement by slowly reducing their hours.⁵

Like other client-driven industries (e.g., the accounting industry, which has clearly crunched the numbers), law firms are quickly learning that in order to retain their valued talent, they must be more innovative about flexibility and less wed to the traditional face-time mentality of practicing law than their competitors. Most young lawyers these days feel that if they cannot be "whole people" who can have some semblance of a life outside of the law firm, they'll walk out the door—at a cost of \$250,000 to \$500,000 per unwanted departure to the bottom line⁶—in search of a place that will allow them to maintain some form of equilibrium.

So what's a law firm to do? Law firms can maintain high levels of client-service while simultaneously providing flexibility to their lawyers. Here are a few tips on how to do just that.

Staying Atop the Technology Curve

A conversation about work/life effectiveness is incomplete without fully discussing the importance of technology to the work/life equation. Technology has provided the essential tools for lawyers to work seamlessly from outside of the office. Law firms that are on top of the technology curve constantly are investing in innovative technologies like telephones in the homes of their lawyers that ring when the office line rings, portals that allow lawyers to log in to their at-work desktop interface from home, e-mails that are automatically sent to lawyers when they receive a voicemail, instant video conference capability from any location using a laptop computer or other mobile device, and flexibility to choose whatever handheld mobile device they would like to use with full reimbursement from the firm.

But just having this cutting edge technology is not enough. Lawyers on the go rely on their firm's knowledge management professionals to, as best said by Google, "organize [the firm's] information and make it universally accessible and useful."⁷ If top notch technology meets knowledge management at its best, technology can increase productivity and boost a firm's bottom line by allowing lawyers unlimited connectivity to all of the firm's resources, in an organized fashion, regardless of their physical location.

Integration at the Firm

But technology is just the bare bones foundation for a law firm seeking to truly embrace flexibility and retain its talent. Without a real connection to a law firm and a wise mentor—or, better yet, a team of them—to guide associates along the way, associates are bound to face seemingly insurmountable work/life challenges that will leave them nowhere to turn except for the exit. Law firm leaders are well-advised to be extra present during the natural transition points that happen during the course of any lawyer's career. Having the right programs in place to support associates, counsel, and partners as they assume a new role that may place different demands on their work/life arrangements can help ease the transition.

For example, summer associates, new associates, lateral associates, midlevel associates, lawyers returning from a leave of absence, and new partners take on a whole host of responsibilities when transitioning into their new roles. Without a solid mentor in place, the demands of their new positions within the firm may leave them overwhelmed and looking elsewhere for a solution to new work/life dilemmas. A formal mentoring program at each of these transition points is critical. Ideally, the mentoring program at each of these stages is 100 percent voluntary, the mentee has a say in who their mentor will be, the pairings have discussed their goals and expectations for the mentoring arrangement, and the firm has provided a reasonable budget for the pairings to get together for a meal to talk candidly and confidentially with one another. It also helps when the firm has designated a talent development administrator to frequently check in to make sure the pairing is actually working.

Work/Life Issues After Parental Leave

One subgroup of lawyers can face an especially challenging transition when it comes to work/life effectiveness: parents returning to work following a parental leave. Many new parents fear that starting a family may have a career penalty. New parents often fear that they will somehow be perceived as less committed to their jobs by virtue of having a child. In addition, unanticipated challenges (e.g., inability to secure appropriate childcare, feeling of guilt of leaving an infant in the care of a third party, infant's unwillingness to take feedings from a bottle, etc.) during leave cause many new parents to feel unprepared for the return. As a result, career return transitions can often fail—the lawyer decides not to return—before a parental leave of absence ends.

In the past several months, law firms have begun to explore how they can address these issues. With many law firms offering up to 18 weeks of paid parental leave, lawyers returning from

parental leave have been away from the firm for a long time. That extended absence can make the transition back to work even more of a challenge.

O'Melveny & Myers recently implemented a unique solution to this challenge by teaming up with New York-based AbilTo, a company that specializes in behavioral health solutions. AbilTo designed a custom program for O'Melveny, for all of its offices worldwide, called Momentum One—essentially a face-to-face coaching program for new parents using Web-based videoconference technology. New parents meet with their AbilTo transition specialist on a weekly basis beginning one month prior to their return to work and continuing for one month after their return to the firm.

AbilTo focused on the legal industry first because of the typical demands that lawyers face—high stress, long hours, and unpredictable schedules. Many new parents who have utilized the service have reported that, by working with their transition specialist, they have been able to identify and creatively solve issues to practical problems associated with their return. They feel more in control, focused, and able to re-engage with their work.

The content of the program addresses both broad concepts of managing a demanding career and family as well as providing practical tools to manage the life transition. Goal setting, communication, boundaries, executive support including planning for childcare, emergencies, work-life effectiveness, and monitoring moods and triggers, are some of the practical skills provided in Momentum One.

There is benefit to both the lawyer and firm. The lawyer develops and learns to apply practical new skills critical to discovering a pragmatic work-life effectiveness; the firm benefits from lower turnover and whole person cost of care, as well as heightened productivity.

Work/Life Offerings Expand at Firms

Over the past several years, as technology options have expanded, law firms have been steadily increasing their flexibility offerings. According to Manar Morales, executive director of the Project for Attorney Retention (PAR) affiliated with U.C. Hastings College of Law,

[f]irms that are serious about talent management are embracing flexibility to avoid unwanted attrition and associated replacement costs. An increasing number of clients

are starting to drive their law firms to have better quality flexibility programs because they understand the link between effective flexibility and diversity. We're starting to see more firms offering more flexibility programs—like automatic reduced hours for lawyers returning from leave, regular telecommuting and job sharing.

According to Ms. Morales, reduced hour policies have come to be expected at most law firms these days. And Ms. Morales notes that the best balanced hour policies are those that offer proportional salaries and bonuses, are available for men and women for any reason without a limit on duration, are individually tailored to meet the particular needs of the reduced workload lawyer, are supported by a balanced hours coordinator, and, perhaps most important, allow their reduced hour lawyers to remain on partnership track (albeit at a proportionally slower pace).

Flexibility also benefits law firms' diversity goals. The Diversity and Flexibility Connection, a 2009 PAR report, summarized the findings of 12 general counsel of major U.S. companies and 12 chairs of PAR Member Law Firms on the topic of best practices to support balanced hour lawyers. The report highlights the inextricable link between flexibility and improved diversity at law firms. It emphasizes, among other findings, that the legal industry needs: better support for nonstigmatized flexible work; increased work referrals to balanced hours lawyers; clients explicitly signaling support for flexible work; and an assurance that client-mandated cost controls do not result in compromised flexibility (e.g., demands that only a certain arbitrary limited number of lawyers may work on any given matter).⁸

Other reports show a steady rise in flexibility options at many law firms. A recently released report conducted by the National Association for Female Executives and Flex-Time Lawyers notes the following about the 2011 Top 50 Law Firms for Women:

- Women comprised an average of 19 percent of the equity partnership at the Top 50 firms for women versus the national average of 15 percent equity partners.
- 100 percent offer reduced hours (up from 96 percent in 2009⁹) and 94 percent of the Top 50 firms allow their reduced workload lawyers to remain eligible for partnership.
- 92 percent offer Flex-Time (up from 42 percent in 2009),¹⁰ 78 percent offer full-time telecommuting (up from 62 percent in 2009),¹¹ 10 percent offer job sharing and 13 percent offer annualized hours (where an associate must bill a certain number of hours each year but not according to any set schedule of days of the week or hours of the day to work).

The implementation of any flexibility program, however, is almost as important as the written policy itself. Ms. Morales notes: "If a policy is introduced with a wink and a nod, here it is, without any thought to its rollout, lawyers simply won't take advantage of the program." **Indeed, while 13 percent of the 2011 Top 50 Law Firms have written job share policies—the usage rate is zero.** Simply having the written policy in place is only half of the battle. The rollout, the communication, and ongoing support at all levels of the firm, in particular law firm management, is essential to get lawyers—a notoriously risk averse bunch—comfortable using the programs. Without a sincere assurance that taking advantage of flexibility programs does not equate with career suicide, the policies may be great on paper—but lawyers simply won't utilize them.

Moving the Ball Forward

In its September issue, the *American Lawyer* recognized Simpson Thacher's chairman, Richard Beattie, 72 years old, as one of its 2011 Lifetime Achievers. The *American Lawyer* asked Mr. Beattie about his biggest regret. Mr. Beattie's response? "I regret the number of vacations with my family I missed as a result of working on transactions."¹² As Harper notes, what better legacy can a law firm leave than "empowering young protégés to avoid regrets similar to their own?"¹³ At the end of the day, law firms want to attract and retain the best talent and, nowadays, to effectively do so, providing true flexibility for their lawyers is a key factor. And clients don't want to see their legal teams disrupted by unnecessary attrition. Is it possible to create a win-win-win for law firms, associates, and their clients?

Some things in the legal industry have not changed over the decades: Clients still want top legal minds working on their matters, minimal disruption to their teams due to unwanted lawyer attrition, quality legal work to be produced, and lawyers who are responsive to their needs. At the same time, law firms want to retain their best talent, exceed their clients' expectations, and promote the growth of the firm. And most associates want to be able to have some life outside of the law firm.

If innovative flexibility programs are truly embraced, carefully crafted and thoughtfully rolled out, what clients, law firms, and their associates want may not actually be mutually exclusive. And rest assured, no client will be left bleeding to death on the emergency room table.

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Endnotes:

1. See "Diversity & Flexibility Connections—Best Practices," The Project for Attorney Retention, Oct. 29, 2009.

2. Deborah Epstein Henry, "Law & Reorder," (2010), at 8-10.
3. Id.
4. Id.
5. Id.
6. See, e.g., Kristin K. Stark and Blane Prescott, "Why Associates Leave: A Special Report," LEGAL TIMES (2007) (with each associate loss, firms lose an estimated \$200,000 to \$500,000 connected to original recruiting costs, sunken training and development costs, resource shortage and replacement costs, administrative and human resource costs, and other factors).
7. <http://www.google.com/about/corporate/company/>.
8. See "Diversity & Flexibility Connections—Best Practices," The Project for Attorney Retention, Oct. 29, 2009.
9. "Working Mother & Flex-Time Lawyers," 2009 50 Best Law Firms for Women.
10. Id.
11. Id.
12. Tania Karas, "To Whom Much Is Given," The American Lawyer, September 2011, at 100.
13. Steven Harper, "Commendable Comment Award," <http://thebellyofthebeast.wordpress.com/2011/09/21/commendable-comment-award-2/>.