

Work InBalance

By Deborah
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The Business Case for Flexibility: Why Flexible and Reduced Hours are in a Legal Employer's Financial Interest

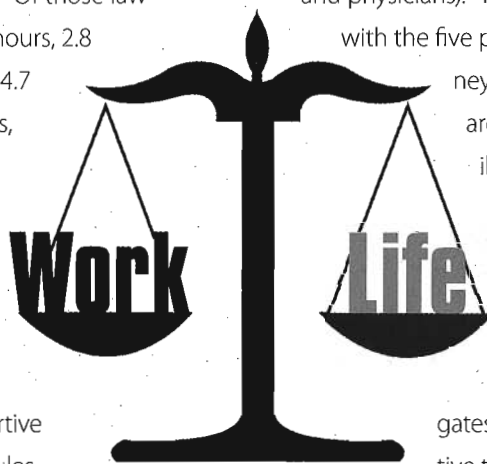
This column is the second of six articles that will be written this year about the balancing and juggling act that we all experience as busy lawyers trying to keep our work and personal lives in order and balance. It is our hope that this series of articles will spark a meaningful dialogue and assist our readers with managing their busy lives.



Deborah Epstein Henry

According to the National Association of Law Placement (NALP), reduced-hour schedules were available in 96.2 percent of the 1,491 offices surveyed in 2006, yet only five percent of lawyers nationally worked reduced hours.¹ Of those lawyers working reduced hours, 2.8 percent were partners, 4.7 percent were associates, and 16.6 percent were counsel/of counsel, senior attorneys, and staff attorneys.² Legal employers are often concerned about being too supportive of reduced-hour schedules because of a fear of opening the floodgates—everyone will want to work reduced hours. However, the statistics dispute that scenario. Some lawyers will never want to work reduced hours, some lawyers cannot afford to take the pay reduction that comes with working reduced hours, and many who work reduced hours do so only on a temporary basis.³

According to the Bureau of Labor Statistics (BLS), just over 14 percent of workers in 2005 usually worked part-time, as did a similar percentage of those employed in professional specialties (for example, engineers, architects, and physicians).⁴ These rates contrast markedly with the five percent rate for law-firm attorneys. Interestingly, the firms that are most progressive on flexible and reduced schedules report usage rates less than the average BLS rates for other comparable fields, at seven to 11 percent.⁵



For those with floodgates concerns, it is also instructive to look at the statistics over the last 12 years. In 1994, when NALP first started tracking reduced-hour schedules, they were available in 86.4 percent of the 995 offices surveyed, yet only 2.4 percent of lawyers nationally worked reduced hours.⁶ Of these lawyers working reduced hours, 1.2 percent were partners and four percent were associates.⁷ Once again, this

increment demonstrates that fear of the floodgates is not a valid basis to discourage support for flexible and reduced arrangements.

As employers often cite economic concerns as a reason to reject these schedules, this column will focus on the business case for supporting reduced-hour schedules. Future columns will discuss the prevailing principles that make flexible and reduced hours work, and other key components to a successful work/life environment.

Reduced-Hour Lawyers are Profitable

When asked about reduced hours, the most common concern of employers is profitability. Law firm management says, for example, that a lawyer is more profitable billing 100 percent of the hours rather than 75 percent. However, this is the wrong economic equation. Instead, the comparison should be the profitability of a lawyer at 75 percent or not at all.⁸ Indeed, according to a 2005 report of the NALP Foundation tracking associates in years 2002-2004, 78 percent of associates leave their law firms by their fifth year of practice.⁹ For women associates of color by their fifth year of practice, the figure jumps to 81 percent.¹⁰ This attrition does not come cheap. It costs a law firm, by conservative estimates, \$200,000 to \$500,000 to replace a second-year associate.¹¹

Management sometimes dismisses the attrition argument, claim-

ing that the law firm economic model relies on attrition. However, management cannot control who is leaving. When the lawyers who leave are the talented ones whom management wants to stay and promote, the law firm suffers. Also, with attrition rates rising to an alarming rate, law firms are re-hiring alumni,¹² when it would be more cost-effective to not lose these lawyers in the first place.

A reduced-hour schedule also can provide an economic cushion for firms as it conveniently anticipates the often unpredictable demands of family life. When the inevitable crises arise of illnesses or emergencies, for example, lawyers working reduced hours can often make up the lost work time during other times not regularly scheduled for work. Also, in a slow economy, reduced-time lawyers can more easily meet their hours, while full-time lawyers receiving a full salary may not be able to do the same.¹³

With Overhead Costs, Reduced-Hour Lawyers are Still Profitable

Another common resistance to reduced hours is that a law firm's fixed overhead costs prevent reduced hours from being economically feasible. This argument usually assumes an economic model that divides overhead costs equally among all attorneys.

But these costs and resources (usually building rental, maintenance, and support staff) are not used equally by all firm lawyers. In other words, the over-

head argument derives from accounting convenience rather than accurately reflecting an individual lawyer's different use of economic resources.¹⁴ For example, a senior partner with a significant portfolio of business and high billable hours uses significantly more resources than a reduced-time lawyer who may occasionally tele-commute, does not use support staff as heavily, and does not have as many associates working under her.¹⁵

James J. Sandman, a senior partner at Arnold & Porter LLP, analyzed the overhead myth using 2001 figures and the two most frequently discussed overhead items—rent and malpractice insurance.¹⁶ In 2001, the average occupancy per lawyer in large law firms was \$41,000, and the average malpractice premium per lawyer was \$4,000. A lawyer on a 75 percent schedule therefore incurs an "excess cost" of \$10,000 in occupancy and \$1,000 in insurance. Sandman then asked: How does the \$11,000 in "excess" compare to revenue? The same survey found that the average revenue per lawyer at large firms in 2001 was \$533,000. The lawyer working at 75 percent would, on average, generate \$400,000 in revenue, demonstrating a significant profit and making the additional \$11,000 cost look immaterial.¹⁷

Reduced-Hour Lawyers are Efficient and Productive

Increasing productivity and efficiency is another economic reason

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why employers should support flexible and reduced schedules. In 2005, the BOLD Initiative, a workplace diversity advocacy organization, found that 10 large employers reaped sizeable economic gains after implementing workplace flexibility programs.¹⁸ The BOLD Initiative arranged pilot projects for companies including The Chubb Corporation, Gannett, Johnson & Johnson, PepsiCo, Macy's Northwest, and Prudential Financial. Programs such as telecommuting, flex-time, and compressed workweeks resulted in decreased overtime, fewer unscheduled absences, increased productivity, and more efficient work processes. In fact, each employer increased productivity by five to 10 percent.¹⁹

Clients Demand Diversity and Consistency

With the composition of in-house legal departments changing, in-house lawyers will want the law firm lawyers who represent them to more accurately represent their diversity—and not just at the lower levels, but also at the top. In 2006, for example, there were 83 women general counsel (16.6 percent) at the Fortune 500 companies.²⁰ Of the 2006 women general counsel, 75 (15 percent) were Caucasian, five (one percent) were African American, one (0.2 percent) was Hispanic, and none were Asian American/Pacific Islander.²¹ Among the 2006 Fortune 500 general counsel, 32 (6.4 percent) were minority and six (18.7 percent) of these minority general counsel were women.²² In 1996, there were only three minority general counsel

at Fortune 500 companies.²³ Additionally in 2006, among the Fortune 501–1000 general counsel, 74 (14.8 percent) were women.²⁴ Among them, 61 (12.2 percent) were Caucasian, one (0.2 percent) was African American, three (0.6 percent) were Hispanic, and four (0.8 percent) were Asian American/Pacific Islander.²⁵ Of the 2006 Fortune 501–1000 general counsel, 24 (4.8 percent) were minority and eight (33.3 percent) of these minority general counsel were women.²⁶

With the rising number of women in corporate legal departments, law firms would financially benefit from improving their retention of diverse lawyers.²⁷ For example, client relations are improved when clients have less firm turnover to manage. Continuity of lawyers minimizes client frustration and disruption of service and avoids incurring costs of training new lawyers.²⁸ Clients usually do not believe that they will not be charged for a new lawyer's learning curve and the loss of institutional memory, and they may lose confidence in firms that are unable to retain their lawyers.²⁹ Some employers have expressed concern that clients will not want to work with lawyers working flexible or reduced hours, but that is not supported in the research. Generally, clients are concerned about two factors in reference to outside counsel: responsiveness and accessibility.³⁰ Assuming those requirements are met (from full-time lawyers as well as those working flexible or reduced hours), clients have not expressed concerns about outside counsel's schedule.³¹ In fact, law firms need to be careful to not mistreat their lawyers working flexible or reduced hours, if for no other reason, because

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these lawyers will be less likely to refer cases to their former law firm if they later go in-house.³²

Competition to Recruit and Retain the Best Talent Requires Flexibility

Avoiding the brain drain and competition for talent is yet another reason why legal employers need to support flexible and reduced schedules. With women comprising the majority of lawyers working flexible and reduced schedules,³³ legal employers cannot ignore that population. For more than 20 years, women have comprised 40 to 50 percent of law school enrollment,³⁴ while only 17.9 percent of law firm partners nationally in 2006 were women.³⁵ The brain drain issue is even more acute for minority women, who comprise only 1.48 percent of partners and 9.16 percent of associates nationally.³⁶ The legal profession can no longer afford to operate without maximizing the potential of half of its intellectual brainpower. Given the rise in attrition figures, competition to recruit female talent at the law school level and retain that talent at the law firm level will only become greater.

Law firms are competing on diversity committees and women and work/life initiatives,³⁷ and they

are hiring former practicing lawyers to play professional development roles to improve their firms' profiles on these issues. Making diversity, work/life balance, and women's issues a basis of competition among law firms, just like salary or pro-bono, is a key element to making change.³⁸ Providing a forum to educate and share information as well as an opportunity to make information public among lawyers and legal employers is also critical.³⁹ The similar hierarchy of law firms lends itself to easy comparison.⁴⁰ Whether law firms are competing to recruit candidates, retain their existing lawyers, or solicit clients, they know they must change their culture and improve their existing training, programming, and statistics or they will be left behind.⁴¹ The power of creating competition at the law student level was recently demonstrated at a forum in New York City in 2006, where Flex-Time Lawyers LLC and the New York City Bar Committee on Women in the Profession released "The Cheat Sheet," the ultimate guide to selecting, creating, and ensuring a women-friendly employer.⁴² "The Cheat Sheet" is arming women law students with the information they need and mobilizing them to be more deliberate in selecting women-friendly employers.⁴³ It is organized

around six indicia of an employer's commitment to women's retention and advancement: statistical and background information; partnership and advancement; leadership and accountability; business development and networking; workplace flexibility; and mentoring. With law students relying on "The Cheat Sheet" to identify women-friendly employers, firms will respond by competing on women-specific programs and policies. Legal employers supportive of work/life and women's issues benefit in terms of recruiting and overall public relations. Favorable work/life policies have become emblematic of employers being progressive on all sorts of issues, including diversity issues generally.⁴⁴ Indeed, favorable work/life policies reflect a general tolerance and positive atmosphere that law school candidates gravitate to as an ideal work environment.

Flexibility Brings Opportunities

The flexibility in a lawyer's schedule also may bring more business. With greater opportunities to develop business in unconventional ways, and with fewer lines delineating work and home, lawyers who are spending more time with their children and in their community are also expanding

their networking base and business development opportunities.⁴⁵

The business case for flexibility is one that goes well beyond the scope of reduced hours and is not just a woman's issue. In 2001, Catalyst reported that 71 percent of men and women law graduates with children reported work/life conflict. For law graduates without children, 62 percent of the women and 56 percent of the men reported work/life conflict.⁴⁶ With technology enabling lawyers to work anywhere also comes the desire to do so, particularly from both female and male "Generation Y" lawyers.

In contrast, senior and supervisory lawyers often worry that important training and work bonds cannot be formed when everything is done remotely. They fear junior lawyers are losing training and mentoring opportunities and the ability to develop close relationships with colleagues. Many law firms believe that the institutionalization of flex-time is even more troubling than the formalization of reduced time, as it can threaten the established corporate culture, even though the economic model would essentially remain the same. Thus, when we analyze the business case for reduced hours, we also need to look at the psychological case for flexible hours and how to build support for a change in how we work while still

ensuring collegiality, proper training, and the bottom line. **DB**

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NOTES

1. See NALP, "Few Lawyers Work Part-Time, Most Who Do Are Women" Press Release, Washington, DC (Dec. 7, 2006) at <http://www.nalp.org/press/details.php?id=65>. In the NALP study, the terminology used is "part-time" rather than reduced hours. Refer to the NALP sidebar for a further discussion of definitions.
2. *Id.* Reduced-hour schedules were the least available at 79.5 percent in firms of 50 or fewer attorneys, and the usage rates at those firms were at 4.8 percent. Availability of reduced-hour schedules was the highest at 100 percent in firms of 501 to 700 attorneys, but their overall usage rates were the lowest at 4.6 percent. In firms of 701 or more lawyers, the availability of reduced-hour schedules was 99.7 percent and the usage rates were the highest at 5.2 percent.
3. Joan C. Williams and Cynthia Thomas Calvert, *Solving the Part-Time Puzzle: The Law Firm's Guide to Balanced Hours*, p. 137, NALP (2004).
4. NALP, *supra* note 1.
5. Williams, *supra* note 3.
6. NALP, "Part-time Schedules for Lawyers Widely Available, Minimally Utilized" Press Release, Washington, DC (Jan. 13, 1995).
7. *Id.* Reduced-hour schedules were the least available at 79.6 percent in firms of 100 or fewer attorneys, and the usage rates were the highest at those firms at 2.7 percent.
8. Lisa Carney Eldridge and Deborah Epstein Henry, "Cashing In on Part-Time," *The Bench*, p. 14 (March/April 2003).

9. Paula A. Patton and Cynthia L. Spanhel, "Toward Effective Management of Associate Mobility. A Status Report on Attrition," p. 21, Table 6, The NALP Foundation, Overland Park, Kan. (2005).
10. *Id.* at 24, Table 12.
11. Joan Williams and Cynthia Thomas Calvert, "Balanced Hours: Effective Part-Time Policies for Washington Law Firms," p. 7, The Project for Attorney Retention Final Report, 2d. ed. (Aug. 2001).
12. Jones, *supra* note 3.
14. *Id.* at 14.
15. *Id.*
16. James J. Sandman, "The Business Case for Effective Part-Time Programs," Remarks at "Summit on Keeping Her in Her Place: New Challenges to the Integration of Women in the Profession," Section of Litigation, American Bar Association (Aug. 11, 2002). When Sandman authored the article, he was the managing partner of Arnold & Porter LLP.
17. *Id.*
18. Leah Carlson, "Flexibility Proves Profitable for Large Firms," *Employee Benefit News* (Sept. 15, 2005).
19. *Id.* The Chubb Corporation also experienced a 50 percent reduction in unscheduled absences and a 40 percent decrease in overtime hours per employee at a claims service center.
20. See "MCCA® 2006 Survey of Fortune 500 Women General Counsel," pp. 28-30, *Diversity & the Bar*® (July/Aug. 2006). This figure is up from 76 in just one year.
21. *Id.* at 30.
22. See "MCCA 2006 Survey of Fortune 500 Minority General Counsel," *Diversity & the Bar* (Sept./Oct. 2006).
23. Alea Jasmin Mitchell, "Report on General Counsel of Color Leading Fortune 500 Companies," *Diversity & the Bar* (May/June 2004)—citing MCCA 1998 Fortune 500 General Counsel Survey.
24. See "MCCA 2006 Survey...", *supra* note 20, at 30, 32.
25. *Id.*
26. *Id.*
27. For a further discussion of how diversity is being used as a criteria for selection of counsel, see Melanie Lasoff Levs, "Call to Action, Sara Lee's General Counsel: Making Diversity a Priority," *Diversity & the Bar* (Jan. 2005); see also Nathan Koppel, "Courting Shell," *The American Lawyer* (June 24, 2004).

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28. Deborah Epstein Henry, "The Case for Flex-Time and Part-Time Lawyering," *The Pennsylvania Lawyer*, pp. 45-46 (Jan./Feb. 2001); see also *Better on Balance? The Corporate Counsel Work/Life Report*, Project for Attorney Retention Corporate Counsel Project, pp. 51-52 (Dec. 2003).
29. *Id.* at 46.
30. *Better on Balance? The Corporate Counsel Work/Life Report*, Project for Attorney Retention Corporate Counsel Project, pp. 51-52 (Dec. 2003).
31. *Id.*
32. Williams, *supra* note 3, at 18.
33. According to NALP, 3.8 percent of the five percent of lawyers working reduced hours in 2006 were women. NALP, "Few Lawyers Work Part-Time, Most Who Do Are Women," Press Release, Washington, DC (Dec. 7, 2006) at <http://www.nalp.org/press/details.php?id=65>.

34. See American Bar Association, "First Year and Total J.D. Enrollment by Gender 1947-2005." For the past 20 years, minorities have comprised 10 to 21 percent of law school enrollment. ABA, "First Year J.D. and Total J.D. Minority Enrollment for 1971-2005." These statistics have not been further broken down to determine minority women enrollment.
35. See NALP, "Percentage of Women and Minorities at Law Firms Up Slightly for 2006; Only 1.48 percent of Partners Are Minority Women," Press Release (Oct. 12, 2006) at <http://www.nalp.org/press/details.php?id=65>. For minorities, the percentages drop down significantly to only five percent of the partnership and 16.72 percent of associates.
36. *Id.*
37. Although women and work/life initiatives are part of the overall work of diversity committees, they are referenced separately because they are often treated differently by employers. The diversity committee is usually the overarching body and then many firms have separate task forces or committees that address issues specific to people of color, women, or work/life balance.
38. Deborah Epstein Henry, "Competition as

- an Instrument of Change," *The Balance Beam* (2005-06).
39. *Id.*
40. *Id.* An example of creating competition to improve the status of women in law firms is the current survey being conducted by Flex-Time Lawyers LLC and *Working Mother* magazine that will list in September 2007 the Best Law Firms for Women.
41. *Id.*
42. Flex-Time Lawyers LLC and New York City Bar, Committee on Women in the Profession, "The Cheat Sheet" (Sept. 14, 2006) at <http://www.flextimelawyers.com/>.
43. *Id.* The Cheat Sheet is also a reference guide for lawyers, law school administrators, law firms, and other legal employers seeking to assure women's retention and advancement.
44. Henry, *supra* note 28.
45. Eldridge and Epstein, *supra* note 8, at 14; see also Deborah Epstein Henry, "Business Development Beyond Rubber Chicken Dinners," *The Balance Beam* (2004-2005).
46. See Catalyst, Executive Summary, "Women In Law: Making the Case," p. 9, New York (2001).



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