



A Newsletter for Members of New York Flex-Time Lawyers LLC 2008 – 2009 Season

What's to Love about the Billable Hour? The Benefits of Formalizing Law Firm Flexibility.

By Deborah Epstein Henry¹



While the billable hour has been decried as the bane of lawyers' lives, it is surprisingly flexible in an important way — a firm generates the same revenue from a lawyer billing from home wearing pajamas as it does from that same lawyer sitting at a desk in the office wearing

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a suit. Yet this benefit has never been fully capitalized upon. Many firms still cling to a tradition of face time in the office and a fear that their corporate culture may be undermined if they accept as routine the idea of allowing lawyers to be physically absent from the office. It is time that more law firms formalize full-time flexibility and increase its usage. It will enable firms to facilitate more satisfaction among their lawyers while increasing their productivity. It will also give lawyers more freedom and greater control over their lives – all without impacting the bottom line.

The Benefits of Formalizing Full-Time Flexibility

Some lawyers want to work full-time flex-time. That is, they want quality, high level work while maintaining a full-time schedule and working less conventional hours or telecommuting. Full-time flex-time pertains to firms that have established formal guidelines for lawyers who are expected to bill the firm's full-time billable hours but who have obtained approval to *regularly* work one or more days outside the office per week or shortened days in the office each week. It does not pertain to lawyers working reduced hours or lawyers who job share. It also does not pertain to lawyers who

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work a full workweek at the office and do spillover work at home or for those who occasionally work outside the office without advance and regular approval. In other words, full-time flexibility “is, well, flexible. It can be a compressed work week: Longer hours Monday through Thursday, to earn Fridays off. Or, it might mean modified start and end times organized around core or peak work times. Or, maybe it means leaving early each Tuesday to make Susie's soccer game. Or, perhaps an employee wants to incorporate training into the middle of the day and will work later to make up the time. In other words, the possibilities for a flexible work arrangement are limitless.”²

Given the ability, and often the need, to work anywhere and everywhere due to technology and the expectation of 24/7 availability from law firms and clients, flexibility in the way lawyers work has become both a business reality and necessity. Law firms have always been concerned about being on the cusp of the latest legal trends and practice areas. Yet, what law firms need to realize is that managing talent and harnessing the flexibility in how work gets done is another cutting edge development that law firms need to master.

² Mary Teresa Bitti, "What are the pros and cons of flex time?" *Financial Post* (Jul. 14, 2008), http://www.financialpost.com/small_business/businesssolutions/story.html?id=645783.

In the Best Law Firms for Women initiative, Working Mother Media and Flex-Time Lawyers LLC track industry trends among the annual 50 winning firms they select. In the 2008 Best Law Firms for Women findings, 36% of winning firms had written full-time flex-time policies and in 2009 the number jumped to 42%.³ Thus, the notion of formalizing flexibility in the legal profession is gaining traction. As *The American Lawyer* put it: “Even in a bad economy, the concept of work flexibility has staying power. For starters, it doesn’t cost anything. Unlike reduced time or job sharing, lawyers on flexible schedules aren’t typically looking to cut down their workload or billable hours. Many are happy to work like maniacs – provided they do it their way, at home or on schedules that deviate from normal office hours.”⁴ Assuming the billable hour remains intact, I anticipate full-time flex-time policies and their usage will continue to grow as firms realize the win-win scenario that they present.

³ Working Mother Media & Flex-Time Lawyers LLC, “Executive Summary: Highlights of Work/Life and Women Trends from the 2009 Best Law Firms for Women Survey,” <http://www.flextimelawyers.com/best/press20.pdf>.

⁴ Vivian Chen, “Law Firm Perk of the Moment: Flextime,” *The American Lawyer* (Nov. 12, 2008), <http://www.flextimelawyers.com/news/news56.pdf>.

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Some firms have long recognized that giving lawyers more flexibility and work/life satisfaction while not impacting the revenue model creates a win/win. Back in 1990, Davis Wright Tremaine LLP invested \$4-5 million in telework because the Firm recognized the business benefits. From his own experience and observations, then managing partner Bradley Diggs said “telework results in more work being accomplished. It can raise productivity levels by allowing staff more control over interruptions, eliminating or decreasing commute time, increasing job satisfaction, and providing the opportunity to focus on in-depth reading, writing and analysis. When more work is accomplished, it translates into more billable hours – a win/win for the firm and its employees.”⁵

Formalizing flexibility standardizes the informal flexibility that lawyers are already seeking and it helps to reduce stigma. In my experience, interacting with thousands of lawyers seeking flexibility, women more often want permission for the flexibility they seek. In contrast, men seem more comfortable coming and going without publicly declaring it.⁶ The problem arises when different assumptions are made about an absence from the office. When the

⁵ Case Study: Davis Wright Tremaine LLP, *Washington State University Cooperative Extension Energy Program and Commuter Challenge* (Apr. 1999), <http://www.commuterchallenge.org/cc/csdwt.html>.

⁶ Chen, *supra* note 4.

office of a reduced hour lawyer who is a mother is dark, for example, the assumption is that she is out of the office due to her reduced hour schedule or she is with her children. In contrast, when that same lawyer worked full-time but was outside the office, the assumption was that she was at a business-related meeting.⁷ Bias training can be effective in raising awareness and reducing the impact of the unconscious stereotypes that everyone brings to the workplace. Formalizing flexibility is another means of standardizing the playing field and reducing the stigma that more often attaches to women. By making a full-time flex-time policy open to men and women for reasons in addition to parenting and encouraging and seeing lawyers at all seniority levels avail themselves of the full-time flex-time policy, it will help to minimize stigma and increase usage.

Formalizing flexibility can also bring environmental benefits and cost-saving opportunities to law firms. And, it can benefit a firm in a crisis by providing a framework for lawyers to work seamlessly. Whether the crisis is short term due to a snowstorm or long term due to a disaster, firms can bolster their resilience and improve the productivity of their lawyers by creating an infrastructure for lawyers to regularly work outside the office.

⁷ Joan C. Williams & Consuela A. Pinto, “Fair Measure: Toward Effective Attorney Evaluations, Second Edition,” *American Bar Association Commission on Women in the Profession* at 19 (Aug. 2008).

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Concerns about Formalizing Full-Time Flexibility

Many firm lawyers are working flexible hours unofficially and some of my law firm clients have questioned the value of formalizing full-time flex-time arrangements. The argument goes that lawyers are professionals and they are given the freedom to come and go; formalizing flexibility may diminish the freedoms they already have. However, the exercise of drafting a policy enables colleagues to reach agreement on the often-divisive issues of implementing such policies. In addition to creating consensus, a written policy is a means to keep extremists in check and a way to create predictability, especially in tumultuous times with changes in management.⁸ Additionally, the written policy gives junior lawyers the ability to plan their futures, rather than opt out of a work environment, assuming it will not be supportive of their future choices. The written policy brings uniformity to the process and minimizes favoritism, *ad hoc* treatment⁹ and secrecy. Also, it avoids the crises that result from not

⁸ Deborah Epstein Henry, "Prevailing Principles to Make Reduced Hour Schedules Succeed," *Diversity & the Bar* (Sept./Oct. 2007), <http://www.flextimelawyers.com/pdf/art9.pdf>.

⁹ Joan Williams and Cynthia Thomas Calvert, "Balanced Hours: Effective Part-Time Policies for Washington Law Firms," *The Project for Attorney Retention Final Report*, 2nd. ed. at 27-29 (Aug. 2001), www.pardc.org/Publications/BalancedHours2nd.pdf.

being able to reach someone who has not disclosed a planned absence from the office. The key is that the policies must be written broadly with creativity, discretion, and individuality in mind, because lawyers seeking flexibility do so for varying reasons and at different points in their lives and the policies should provide the structure and framework to enable lawyers in different situations to thrive.

Some firms are fearful that formalizing flexibility will result in loss of control over the workforce and the way work gets done. One firm addressed this concern by putting parameters around the access to flexibility. As *Above the Law* reported, Cleary Gottlieb Steen & Hamilton LLP instituted a telecommuting policy in 2008 where all associates who have been at the Firm up to one year can work one day a month from home or another location. Associates who have been with Cleary for more than one year can work from home or another location two days per month.¹⁰ Additionally, lawyers who have been at the Firm for two years can seek greater full-time flexibility by assuming a full workload but telecommuting more.¹¹ Cleary's policy places guidelines around the full-time flexibility and it minimizes

¹⁰ "Biglaw Perk Watch: One Two Three Four, Cleary Declares Perk War!" *Above the Law* (Feb. 13, 2008), http://abovethelaw.com/cleary_gottlieb/2008/02/.

¹¹ *Id.*

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stigma by being open to all lawyers at the Firm for reasons in addition to childcare.

Another employer fear is that by providing more flexibility to all lawyers, there would be a loss of community and culture within the law firm. In 2007, as a consultant to the New York State Bar Association Special Committee for Balanced Lives in the Law, I facilitated a session of New York partners in charge of associate issues and this was the concern that was raised. These partners relayed that they built bonds with their colleagues by having late night dinners and working weekends at the office in jeans. They were puzzled at how to manage “Gen Y” lawyers who said they wanted more mentoring and feedback but they did not want to be in the office to receive it. These concerns, while real, are not insurmountable. Creating a policy that formalizes access and usage of flexibility actually will create a greater sense of community because there will be guidelines for being in the office. For example, departments could create certain core hours where all lawyers ideally are in the office. Or, practice groups could set a weekly meeting on a certain day, asking all lawyers to be in the office, where possible. Some firms may also address this concern by offering more flexibility to the experienced lawyers and providing flexibility for junior lawyers at a gradually expanding rate. These steps will ensure that flexibility will not negatively impact mentoring and training.

Some employers also fear that by formalizing flexibility and endorsing more telecommuting, it will negatively impact the vibrancy and intellectual exchange in the office. The argument follows that there are not the same opportunities for impromptu debate and discussion when team members are outside the office. While it is true that there is less likelihood of unplanned conversations when lawyers are outside the office, this is already a business reality due to global teams and matters that are staffed with lawyers who work from a multitude of offices. Even when lawyers work out of the same office, many lawyers report that they seldom convene in person. Whether they are a floor apart or hundreds of miles apart, they more often communicate by e-mail, instant messaging, and phone. For those smaller offices where there is more of a premium on presence, the same opportunities for engaging discussion can be realized with proper planning. For example, if a lawyer is regularly in the office three days a week, schedule a team meeting on one of those days to provide a forum for brainstorming. Lawyers who telecommute can also be conferenced in for impromptu meetings where possible.

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How to Formalize Full-Time Flexibility

Employees expect and appreciate the ability to work flexibly and in turn, they have a greater sense of loyalty and want to stay with the employers that provide it.¹² A good example is Ross & Associates, an environmental consulting firm, which executed formal flex-time and telework plans for its consultants. Bill Ross, the president of the Firm, found that “telework and flextime put more fuel in the engine of our business by allowing people to take care of personal issues.”¹³ At Ross & Associates, the Remote Work Plan was created to formalize and create standard guidelines and expectations for employees seeking to work regularly or occasionally from home.¹⁴ As a result of the Plan’s implementation, more than 50% of employees obtained a flexible start and stop time. Ross & Associates attributed three business successes to the Plan – employee retention, increased productivity and improved work/life balance.¹⁵

To implement an effective full-time flex-time policy, a law firm would

¹² Bitti, *supra* note 2.

¹³ Case Study: Ross & Associates Environmental Consulting, Ltd., *Commuter Challenge* (Oct. 2005), http://www.commuterchallenge.org/cc/cases/tudies/cs_rossassociates.html.

¹⁴ *Id.*

¹⁵ *Id.*

need to put into place communication protocols that provide a framework for lawyers to be responsive and accessible when outside the office.¹⁶ At Ross & Associates, a committee drafted a set of guidelines that were reviewed and then converted into a cohesive procedure for remote workers. A review team then carefully considered multiple factors which included “ensuring convenience for remote workers without creating a burden on their co-workers; providing seamless service to clients; maintaining management comfort with people spontaneously working from home; and determining how to allow remote workers to have productive access to the company’s systems without posing a security threat.”¹⁷ Interested consultants worked with mentors to complete a form which articulated the expectations for remote working and asked a series of questions about how the consultants would make their absence from the office seamless for colleagues and clients.¹⁸

Similarly, in a law firm, a department chair would meet with the lawyer seeking flexibility and the lawyer’s supervisors to determine the lawyer’s requested workweek schedule and location preferences and match them with departmental

¹⁶ Bitti, *supra* note 2.

¹⁷ Ross & Associates, *supra* note 13.

¹⁸ *Id.*

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and client demands. For example, a working parent may request to work what I call “bus-stop hours” from home from 9:00 to 3:30 two days per week, with three longer days in the office. Another lawyer, who is a late riser or has a long commute burdened by traffic, may prefer to work in the office from 11:00 a.m. to 9:00 p.m. daily. Depending on firm culture, departmental and client demands, some firms may require that lawyers working full-time flex-time be in the office a minimum of three days per week while other firms may allow lawyers to telecommute all week.

Regardless of the proposed schedule, lawyers working full-time flex-time must maintain excellent communication, and remain flexible to be available for crises, unexpected deadlines, and client needs when they are not scheduled to be in the office.¹⁹ The firm should outline its expectation of responsiveness and accessibility when attorneys are outside the office and specify the need for emergency contact information for crises that arise. In turn, the firm should be flexible and allow for changes in scheduling when matters are not pressing.²⁰ For firms concerned that attorneys outside the office will not share in the responsibility of emergency work for new matters, they can set up a rotation schedule to ensure coverage. Under the

¹⁹ Henry, “Prevailing Principles to Make Reduced Hour Schedules Succeed,” *supra* note 8.

²⁰ *Id.*

rotation schedule, different attorneys would be notified in advance that they are “on weekend call” (similar to many doctors) beginning on Friday afternoon and lasting through the weekend and if a new matter or new deal arises in that time frame, they should expect the call. This type of rotation schedule has worked well for in-house lawyers at newspapers who need to be available for legal matters and crises that arise with a daily paper.²¹

Although the future of the billable hour is uncertain, while it remains intact, it is critical that law firms capitalize on its benefits. Given technology and the expectation of 24/7 availability by colleagues and clients, law firms need to recognize the business necessity of maximizing the billable hour’s flexibility. By formalizing flexibility, firms can enhance their lawyers’ productivity and satisfaction while engendering loyalty and ensuring the bottom line.

²¹ Deborah Epstein Henry, “Facing the FACTS: Introducing Work/Life Choices for All Firm Lawyers Within the Billable Hour Model,” *Diversity & the Bar* at 23, n. 22 (Nov./Dec. 2007), <http://www.flextimelawyers.com/pdf/art10.pdf>.

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RESOURCES

What follows are 2009 reports and studies on work/life balance and women's issues for lawyers:

- ✓ Working Mother Media & Flex-Time Lawyers LLC, "Executive Summary: Highlights of Work/Life and Women Trends from the 2009 Best Law Firms for Women Survey," (2009), <http://www.flextimelawyers.com/best/press20.pdf>.
- ✓ Jennifer Belli & Laura M. Unflat, "Where Are We Now? A Report on the Occupational Status of Women Attorneys in Massachusetts," *Employment Issues Committee of the Women's Bar Association of Massachusetts* (2009), <http://www.womensbar.org/images/WBAEmploymentReport.pdf>.
- ✓ National Association for Law Placement, "Most Lawyers Working Part-time Are Women – Overall Number of Lawyers Working Part-time Remains Small," (Dec. 17, 2009), <http://www.nalp.org/parttimesched2009>.
- ✓ Darragh J. Davis, Deborah Epstein Henry, Rupa G. Singh and Elizabeth B. Daniels, *ACC Docket*, "Increase Profits and Savings Through Work/Life Balance," (Nov. 2009) <http://www.balanomics.net/pdf/acc.pdf>.
- ✓ National Association for Law Placement, "Law Firm Diversity Demographics Show Little Change, Despite Economic Downturn. Representation in Some Markets Declines While Others Show Small Gains," (Oct. 21, 2009), <http://www.nalp.org/oct09lawfirmdiversity>.
- ✓ Stephanie A. Scharf, Cheryl Tama Oblander, Marianne Trost and Elizabeth Tipton, *The National Association of Women Lawyers and The NAWL Foundation*, "Report of the Fourth Annual National Survey on Retention and Promotion of Women in Law Firms" (Oct. 2009), <http://www.nawl.org/Assets/Documents/2009+Survey.pdf>.
- ✓ Cynthia Thomas Calvert, Linda Bray Chanow and Linda Marks, *The Project for Attorney Retention*, "Reduced Hours, Full Success: Part-Time Partners in U.S. Law Firms" (Sept. 2009), <http://www.pardc.org/Publications/Part-TimePartner.pdf>.

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- ✓ “MCCA® 2009 Survey of Fortune 500 Women General Counsel,” *Diversity & The Bar* (Jul./Aug. 2009), <http://www.mcca.com/index.cfm?fuseaction=page.viewPage&pageID=1931>.
- ✓ Deepali Bagati, “Women of Color in U.S. Law Firms,” *Catalyst* (Jul. 2009), http://catalyst.org/file/304/woc_law-report.pdf.
- ✓ Center for Women in Law, “Austin Manifesto on Women in Law,” (May 1, 2009), http://www.utexas.edu/law/academics/centers/cwl/summit/austin_manifesto.pdf.
- ✓ “Legal Talent at the Crossroads: Why New Jersey Women Lawyers Leave their Law Firms, and Why They Choose to Stay,” *A Report of the New Jersey State Employment & Training Commission. Council on Gender Parity in Labor and Education* (Apr. 2009), http://www.cww.rutgers.edu/Docs/Legal_Talent.pdf.

THE NEW YORK WRAP-UP

Flex-Time Lawyers LLC was founded in Philadelphia in 1999 and the Philadelphia chapter has completed its tenth season while the New York chapter its seventh. New York programs were hosted in the seventh season by: Orrick, Herrington & Sutcliffe LLP, DLA Piper LLP, Sidley Austin LLP and White & Case LLP. What follows are the topics we covered in the 2008 – 2009 season.

- Winds of Change are Here: How Do Law Firms Avoid Getting Blown Away?
- Do Women Lack Ambition?
- Why Work/Life Balance and Women's Issues Matter in the Economic Downturn.
- Leading Yourself to Success.

In its seventh season, the New York **Flex-Time Lawyers LLC** mailing list grew to over 3000. Membership is comprised of law firm, in-house, solo practitioner, and non-profit lawyers as well as legal recruiters, legal administrators, lawyers seeking to re-enter the job force, and others looking for a resource or work/life balance, the retention and promotion of women lawyers, and new models of legal practice. Press coverage for the tenth season included, among others, *ABA Journal*, *Above The Law*, *Adam Smith, Esq.*, *Bitter Lawyer*, *Blog Talk Radio*, *Business Courier*, *Chicago Daily Law Bulletin*, *Darling Hill*, *dBusiness News*, *Examiner.com*, *Forbes.com*, *Houston Business Journal*, *Indianapolis Star*, *JD Journal*, *Law.com*, *Long Island Business News*, *Memphis Daily News*, *Minneapolis St. Paul Business Journal*, *Ms. JD*, *Law360*, *New York State Bar*



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Association Committee for Lawyers in Transition, On the Record, One-on-One with Steve Aduato, Out of the Jungle, Patent Baristas, Pittsburgh Tribune-Review, Richmond Times-Dispatch, The American Lawyer, The AmLaw Daily, The Denver Post, The Legal Intelligencer, The Nashville Post, The National Law Journal, The Tennessean, The Wall Street Journal, Wall Street Journal Law Blog and Yahoo Online.

Flex-Time Lawyers LLC continues to collaborate with the press as a means to dispel misconceptions about women lawyers and lawyers seeking work/life balance, educate management and employers, and share information to effect change.

FLEX-TIME RECRUITING

With **Flex-Time Lawyers LLC** in its seventh season in New York, employers are increasingly using the company as a job resource when looking for candidates to work a flexible or reduced schedule.

If you are a lawyer interested in finding a new position, please update your online profile on www.flextimelawyers.com and be sure to indicate your interest in receiving recruiting announcements and your preferred e-mail address. Also, you may e-mail recruiting@flextimelawyers.com and include in the subject line of the e-mail your name and "seeking employment position." Be sure to also include with the e-mail your resume and a brief description of the position you are seeking. **Flex-Time Lawyers LLC** will keep your information on file and contact you if there is an employment opportunity that meets your credentials and interest.

If you are an employer seeking a flexible or reduced schedule lawyer, e-mail a job description to recruiting@flextimelawyers.com and you will receive a response with further details about finding the right candidate.

FLEX-TIME INQUIRY

Deborah Epstein Henry is currently writing a book on work/life balance, the retention and promotion of women lawyers, and new models of legal practice. If you know of any best practices or innovative solutions to address these issues that are being implemented at your place of employment or elsewhere, please e-mail Debbie at dehenry@flextimelawyers.com.

FLEX-TIME FEEDBACK

Flex-Time Lawyers LLC welcomes feedback about its programs and services as well as overall suggestions for improvement. E-mail your comments and suggestions to dehenry@flextimelawyers.com.

Thank you for your continued interest and support of **Flex-Time Lawyers LLC**. I look forward to seeing you at our first program in 2010. Details to follow soon.

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