



Balancing work and personal life

# Developing flexible work options for lawyers



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# Developing Flexible Work Options for Lawyers

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# Introduction

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The first version of this handbook on alternative work options and leave arrangements originated at a 1988 planning meeting for the Special Committee on the Participation of Women in the Bar and was published in December 1990. It was well received. In 2003, State Bar President R. George Burnett formed the Ad Hoc Committee on Flexible Work Options, charging the committee to review and, where necessary, update the handbook. One of the innovations of this second version is its availability in electronic form.

An alternative work schedule is any arrangement whereby a lawyer works on a schedule different from that of other lawyers in the organization. It may involve working fewer hours, or working them at different times. Another alternative work option is working not from the employer's office, but from another location, usually from the employee's home.

To develop the first version of this handbook, the Special Committee's Handbook Subcommittee reviewed model work options policies that had been formulated and used by bar associations and employers both in and outside of Wisconsin. Almost without exception, these policies were geared toward large firms employing 50 or more attorneys. To obtain the typical Wisconsin employer's perspective, in 1989 the original

subcommittee drafted and circulated an informal survey addressing alternative work schedule and leave arrangement issues.

The 1989 survey was sent only to employers and employees who had already participated in alternative work schedules or leave arrangements. Some of its results still inform the 2004 version of the handbook. This version also includes materials derived from online model policies reviewed, articles researched, and anecdotal interviews we held with employers and employees participating in alternative work arrangements.

When this handbook was first published in December 1990, 12 states, including Wisconsin, had enacted mandatory parental and family leave laws. By 2004, more states have enacted such laws, and the Federal Family and Medical Leave Act also imposes leave requirements.

Even for employers who are not legally compelled to offer leaves, practical considerations may offer just as strong an incentive to do so. Particularly where lawyers are part of a two-income household, all the responsibilities associated with family life must be split between spouses who are devoting 50 to 60 hours a

week to their jobs. A phenomenon seen since this handbook was first published is the rise of two-career households in which the two employers are in different cities. Consequently, an opportunity for flexibility in locations and in work schedules becomes a significant concern if lawyers are to remain in their jobs while maintaining the variety of family responsibilities they hold.

Before the first version of this handbook was published, a U.S. Census Bureau study found that employers who offer leave to accommodate childbirth are more likely to have their employees return to work after childbirth than employers who do not offer such leaves. It remains true that an employer in the 2004 marketplace who wishes to recruit and retain qualified personnel must be willing to make some accommodation regarding leaves.

In addition to the opportunity to take leave, another key recruitment and retention factor is the availability of alternative work arrangements. In 2001 the American Bar Association Commission on Women in the Profession noted, "Except for relatively short periods of their

careers, most professionals appear reluctant to sacrifice the income, structure and relationships that come with full-time work. 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.”

The American Bar Association’s Young Lawyers Division also has taken an interest in this topic. It surveyed more than 3,000 attorneys in 1984 and in 1990 to determine the level of and reasons for career dissatisfaction among practicing attorneys. The ABA survey revealed that in 1990, 15 percent of lawyers reported the availability of time for themselves and their families as the most important factor in their overall feelings about their jobs. From 1984 to 1990 the number of lawyers reporting lack of personal time as a factor in job dissatisfaction increased from 46 percent to 55 percent, and those reporting lack of family time

increased from 35 percent to 45 percent. With expectations for billable hours increasing and the number of lawyers with stay-at-home spouses decreasing, dissatisfaction and “burnout” problems are not going to disappear. Fortunately, a 2003 survey of 1,305 firms, conducted by the National Association for Law Placement, indicated that 96 percent of the firms surveyed had instituted flextime or part-time schedules for their lawyers.

The rapid changes in office technology since this handbook was first published have directly contributed to the rise in “telecommuting.” Thus, this revised handbook includes a full chapter addressing how technology can be used to allow a lawyer to perform his or her work from a location other than the employer’s facility, and still satisfy client and employer expectations.

This handbook’s overall goal is to help participants in all legal work

settings – from 100-person law firms to three-person firms, from corporate legal departments to government agencies – develop solutions to the conflict between work and personal obligations that will be successful for all concerned.

The handbook attempts to identify the issues that must be addressed in developing alternative work option and leave arrangements, offer alternatives for addressing these issues, share our information about what other Wisconsin legal employers are doing and what technology they are using, offer suggestions on how to draft a written plan or policy, and provide a sample form for use in drafting a written plan or policy. We hope that this handbook and its related links will continue to serve as a useful tool for employers and employees in various work settings.

# Policies and Practices Concerning Leaves

## Options for Types of Leaves

### Leaves Required by the Wisconsin Family and Medical Leave Act and the Federal Family and Medical Leave Act

Both the Wisconsin Family and Medical Leave Act<sup>1</sup> (Wisconsin Act) and the Federal Family and Medical Leave Act<sup>2</sup> (Federal Act) require employers with at least 50 permanent employees to provide a period of unpaid leave to their employees to attend to certain family obligations. There are differences and similarities between the two laws, which will be discussed below.

The two laws first differ in how they define an eligible employee. The Federal Act defines an eligible employee as one who has at least 1,250 hours of service during the previous 12-month period. The Wisconsin Act defines an eligible employee as one who has been employed by the same employer for more than 52 consecutive weeks and who worked for the employer for at least 1,000 hours during the preceding 52-week period.

The Federal Act is more generous than the Wisconsin Act in the length of time that an eligible employee may use for leave guaranteed by the law. The Federal Act entitles an employee to a total of 12 weeks of leave during

any 12-month period for the birth of a child, the adoption of a child, to care for a spouse, “child,” or “parent” with a “serious health condition,” or if the employee is unable to perform his or her duties due to the employee’s own serious health condition.

Like the Federal Act, there are three types of leaves that must be offered under the Wisconsin Act. One is “parental family leave,” which entitles an employee to unpaid leave for up to six weeks during a 12-month period for the birth or adoption of a child. The second is “caretaking family leave,” which entitles an employee to take unpaid leave for up to two weeks during a 12-month period to care for a child, spouse, or parent with a serious health condition. The third is “medical leave,” which entitles an employee to take up to two weeks of unpaid leave during a 12-month period if the employee personally is suffering from a serious health condition rendering him or her unable to perform his or her duties.

Both the Federal and Wisconsin Acts provide key definitions for terms such as “parent,” “child,” and “serious health conditions,” which will assist employers in determining if the employee requesting the leave is entitled to the leave under either law. Both laws provide that the employer is not barred from providing more generous benefits than are guaranteed by the Acts.

Both Acts contain specific provisions concerning notice, reinstatement rights, employees’ rights to benefits while on leave, prohibited acts, and procedures for enforcement. If you are an employer affected by either of these Acts, you should review them and related regulations carefully to determine how they should be applied to your work setting. For purposes of this handbook, the key significance of the Acts is that if you are an employer with 50 or more permanent employees, your leave program must, at a minimum, provide all the protected leaves required by the Acts.

The Wisconsin Department of Workforce Development’s Web site has several documents to assist employers and employees in comparing state and federal laws. You can find this site at: [www.dwd.state.wi.us/er/family\\_and\\_medical\\_leave](http://www.dwd.state.wi.us/er/family_and_medical_leave) .

### Childbirth-related Disability Leave

A childbirth-related disability leave covers any period during which an employee is unable to perform her duties due to medical conditions associated with pregnancy or childbirth. This is probably the most common type of leave offered in Wisconsin legal workplaces.

If your organization has a medical disability policy, the Pregnancy Discrimination Act requires that benefits offered for childbirth-related disability be at least as favorable as those offered for other types of medical disability.<sup>3</sup> For example, you cannot require an employee to commit to return to work on a specified date as a condition for entitlement to childbirth-related disability benefits unless the same condition applies to other medical disabilities. On the other hand, the Pregnancy Discrimination Act does not prohibit an employer from treating pregnancy more favorably than other disabilities.<sup>4</sup> Employment law in Wisconsin<sup>5</sup> prohibits discrimination against any woman on the basis of pregnancy, childbirth, maternity leave, or related medical condition.

Some employers offer the same period of leave to employees who adopt a child as they do to employees who give birth. Clearly, the same medical disability considerations do not apply in an adoption scenario. However, some employers recognize that some period of bonding and adaptation is needed. Both Acts clarify that an employer must provide leaves of either six or 12 weeks for employees who adopt, and this guarantee is gender-neutral. In other words, an adoptive father is entitled to the same leave as the adoptive mother.

The Federal Act and the Wisconsin Act both allow an employee to elect to substitute accrued paid vacation leave, personal leave, or family leave for unpaid leave for the birth or adoption of a child. The Wisconsin

Act also allows the parent to choose to substitute accrued paid sick leave for an unpaid leave for either the birth or adoption of a child. The Federal Act allows an employer to require an employee to substitute accumulated paid vacation, personal, or family leave during the leave they take under the Act. The Wisconsin Act requires that the leave be taken within 16 weeks of the birth or adoption of the child. The Federal Act provides that the right to take a leave of this nature expires 12 months after the birth or placement of the child for adoption.

### **Family Care Leave**

Typically, family care leave is offered in connection with the birth or adoption of a child, or to care for a family member with a temporary medical problem. It also may be offered to parents of preschool-age children. Unlike childbirth-related disability leave, which is available only to women, family care leave is an option that can be used by either men or women. The Federal Civil Rights Act<sup>6</sup> and Wisconsin's Fair Employment Law<sup>7</sup> prohibit limiting the availability of such leaves to only one gender.

### **Other Leaves**

Some employers may wish to make leaves available for nonfamily-related interests. These interests may be limited to activities that directly benefit the organization, such as running for a political office, chairing a professional committee, or writing a

book or article on a substantive area of the law. Alternatively, an employer may wish to promote the general satisfaction, well-being, and productivity of its attorneys by making leave available on a discretionary basis for any personal interest, such as travel, nonlegal work, or continued education.

Factors the employer may want to consider in granting such leave might include the length of leave requested, the reason for the leave, the leave's effect on the other attorneys in the office, the nature of the work performed by the attorney, and the attorney's seniority. It is reasonable and helpful for the employer to require advance notice for requests for such leave, as well as a plan to cover the transition periods of separating from and returning to work.

## **Eligibility for Leaves**

Some employers may wish to limit the availability of leaves to particular groups of employees (that is, associates, partners, or support staff). Others may wish to require a minimum period of employment as a condition for taking a leave. A full discussion of issues concerning eligibility is contained elsewhere in this publication.

## Duration of Leaves

The type of leave for which it is easiest to establish a fixed period is leave associated with the birth or adoption of a child. The American College of Obstetricians and Gynecologists has determined that disability related to childbirth typically involves a period of six to eight weeks for a vaginal delivery and up to 10 weeks for a caesarean delivery.<sup>8</sup> The period of disability following a birth will vary with each individual and may involve a period of disability during the pregnancy.

A common childbirth-related disability policy for a small employer permits an automatic leave for six weeks following the birth or adoption of a child, with additional leave granted upon certification by the employee's physician. (The employee has the option of choosing to take an additional six weeks of leave under the Federal Act. As stated above, however, this six-week period can be required to be taken with accrued vacation or other paid leave at the employer's option.) This type of policy creates predictability for both employer and employee. It also avoids the administrative process of reviewing disability certifications under typical circumstances, when the period of disability is consistent with that recommended by the American College of Obstetricians and Gynecologists.

Some employers permit accrued paid vacation to be added to disability leave. This issue may be of particular concern to employers who, because

of size or current workload, have difficulty reassigning tasks during any period of leave. For this type of employer the extension of a six-week or 12-week leave period to a longer absence resulting from the addition of vacation time may create a hardship. For other employers, the added flexibility of extending a period of leave through use of vacation is an enhancement that supports the goals of recruiting and retaining a productive and satisfied work force.

The length of family care leave can be:

- for a fixed time period (for example, 12 weeks);
- for a guaranteed minimum with the option of extension (for example, a six-week minimum with the option to extend up to one year upon approval by the management committee after taking into account the needs of the employer, the reasons for the request, and other relevant factors); or
- completely open-ended.

Some employers may want to coordinate childbirth-related disability leave with other family leave so that the total period of leave does not exceed a certain maximum (for example, six months).

If leaves are offered for reasons unrelated to disability or dependent care, duration must be addressed by taking into account the reason for the leave, the employer's ability to reallocate work, and other factors relevant to the particular workplace.

The length of a leave will affect expectations concerning the attorney's work involvement during the leave period. For example, an attorney on leave for one year would typically have his or her work load completely taken over by others and would not be required to stay abreast of events occurring during the leave period. In contrast, an attorney on leave for six to 12 weeks might be expected to continue some oversight and communication responsibilities in order to meet the needs of clients or the organization. It is reasonable to expect an attorney to remain professionally committed to his or her work during a period of leave. It may be unreasonable to expect that commitment to extend beyond ongoing phone communication and response to real emergencies that cannot be handled effectively by others. The best way to avoid problems surrounding work involvement while an attorney is on leave is to spell out specific expectations in advance.

The length of leave offered affects issues such as whether to continue salary, opportunities for promotion or advancement to partnership, and the right to continued benefits during the period of leave.

# Compensation, Benefits, and Effect on Advancement

## Compensation

An issue that must be addressed by all employers (including those affected by the Wisconsin and Federal Family and Medical Leave Acts) is whether to provide salary continuation during some or all of the period of leave.

The period following birth or adoption of a child usually involves an increase in medical and other expenses and a dramatic disruption in life routine. A discontinuance of salary during this same period exacerbates those problems and is counterproductive to the goal of enabling attorneys to return to work with a positive attitude. Yet, if the economics of a particular work setting do not permit full salary continuation during the leave, alternatives include continuing pay for a portion of the leave period only, or continuing only a percentage of the employee's pay (for example, the amount guaranteed by the employer's long-term disability policy).

It is less common for Wisconsin legal employers to continue salary during leaves not related to the birth or adoption of a child. Salary continuation under these circumstances is fairly common among large firms (100 or more attorneys). In contrast, the economics of a small firm may not permit this benefit to be offered in all circumstances. For the small employer, the best solution may be to

handle compensation during family care or other leaves on a case-by-case basis.

## Benefits

There are legal considerations that may require the employer to provide at least a minimum level of benefits during any period of leave.

If the employer maintains a qualified retirement plan (such as a profit-sharing or 401(k) plan), the Employee Retirement Income Security Act of 1974 (ERISA)<sup>9</sup> contains rules concerning the relationship between an employee's hours of credited service and his or her right to receive various benefits under the plan.

If the employer offers health insurance benefits, the Consolidated Omnibus Reconciliation Act of 1985 (COBRA)<sup>10</sup> requires that employees on leave be given the opportunity to elect continued coverage at their own expense for a period of up to 18 months. Employers with fewer than 20 employees are exempt from this requirement.

Continuing benefits is usually not an issue if the period of leave is two months or less. Most legal employers in this situation continue all benefits on the same basis as if the employee was at work. If the leave period extends beyond two months, benefits may need to be adjusted, or at least taken into account when determining compensation.

## Advancement

The length and number of leaves attorneys take are the key factors in determining what, if any, effect their absences will have on partnership or other advancement. Alternative methods of adjusting partnership or other progression for time away from work are considerations that must be made by employers and employees alike.

## Procedures

For employers who wish to retain flexibility in their leave arrangements by reviewing requests individually, a good rule of thumb is that the more predictable and documented you can make the decision-making process, the more benefits you are likely to derive from the program. An employer may be dealing with requests as diverse as a two-week leave to care for a child injured in an automobile accident and a one-year leave to travel around the world. Lawyers are more likely to make appropriate requests and to perceive the policy as a positive one, regardless of whether their individual requests are granted, if there is an established decision-making body and a publicized set of criteria used in the decision-making process. The criteria themselves can be open-ended (for example, "the

needs of the lawyer and organization,” “the ability of the organization to reallocate work assignments”), but the process must be fair. Some organizations appoint a leave committee to review all requests, a practice that promotes the goal of consistency.

It makes sense in most situations to require reasonable advance notice of a lawyer’s intent to take a leave. That notice should include the time period that the employee expects to be gone. If the particular leave requested is not offered as part of a fixed policy, the employer also may want a statement of reasons for the leave request.

“Quality of life” is a significant issue facing the legal profession today. Without a workplace environment willing to accommodate the pursuit of outside interests, the pressure of greater billable hours and increase in two-career households may force “all or nothing” decisions. This result is detrimental to the attorney, to his or her clients, and to the employer.

A leave program can help to avoid this result. It assists employers in recruiting the best legal talent within their salary restrictions; prevents the loss of well-trained, valuable attorneys; and promotes a culture that inspires loyalty and high-quality performance.

## Resources on the Web

This is not an exhaustive list, but merely a suggestion of some Web sites that can assist employers and employees who are considering the issues discussed in this chapter.

► Philadelphia Bar Association model leave policy, [www.philabar.org/member/governance/mp\\_fam2.asp#fn6](http://www.philabar.org/member/governance/mp_fam2.asp#fn6)

► Minnesota Women Lawyers, [www.mwlawyers.org/new\\_page\\_3.htm](http://www.mwlawyers.org/new_page_3.htm) (information regarding publication for sale with six model policies)

► Montgomery County, Maryland Chamber of Commerce, [www.worklifemontgomery.org/fopp12.html](http://www.worklifemontgomery.org/fopp12.html)

► Adoption Friendly Workplace, [www.naic.acf.hhs.gov/pubs/f\\_benefi.cfm](http://www.naic.acf.hhs.gov/pubs/f_benefi.cfm)

# Alternative Work Schedules

## Alternative Work Arrangement Options

Alternative work arrangements take a variety of forms, only some of which are discussed in this handbook. Any work schedule variation must be based on both the employee's and employer's needs. The following are brief descriptions of the most frequently used alternative work arrangements.

### Flextime

Flextime is a generic term used to describe a program for scheduling work that allows an employee to set starting and ending times within certain limits set by management.<sup>11</sup> Since it was developed in Germany in 1967 to alleviate traffic problems, the concept has become widely accepted and used throughout Europe. Flextime is gaining popularity in the United States as more employees seek a balance between their professional and personal lives. A recent survey of 675 firms by the National Association for Law Placement indicated that 94.5 percent of the firms surveyed had instituted flextime schedules for their lawyers.<sup>12</sup>

Flextime variations include:

- ▶ Employees select the starting and ending time but still work an eight-hour day;
- ▶ Employees may vary the starting and ending time each day, but must work an eight-hour day;
- ▶ Employees may vary the day length, but must work a 40-hour week within a five-day period (management may or may not require employees to work certain core hours);
- ▶ Employees may redefine the weekend, choosing when they will work the prescribed hours within a six- or seven-day period; and
- ▶ The employee and management negotiate the total number of hours the employee will work in a year. When these hours will be worked may be totally at the employee's discretion, or management may set certain core requirements, that is, a certain number of hours per month or a certain day or days when the employee must be at the workplace.

Here are some examples of flextime in a legal firm:

- ▶ A lawyer with young children worked full-time for a firm but was allowed to refuse overnight travel and weekend work because of her child-care responsibilities.
- ▶ A lawyer with school-aged children worked full-time for a firm, but limited her office hours to 6 a.m. through 3:30 p.m. so that she could be with her children when they arrived home from school.

### Compressed Work Week

A compressed work week usually involves a work week (normally 40 hours) in which the prescribed weekly hours are performed in fewer than five days. The most common form is a four-day, 10-hour-per-day work week.

One example of a compressed work week in a legal firm is that of a lawyer with young children who worked full-time for a firm, but her office hours were restricted to Monday through Thursday.

## Job Sharing

In job sharing, two people share the responsibility for one full-time position and divide the salary and fringe benefits. Although individual job functions may vary, the duties and responsibilities of a single position are divided to provide total coverage.<sup>13</sup> This form of permanent, part-time employment accommodates career-oriented individuals who traditionally could pursue their careers only in full-time positions. It is an attempt to bring part-time work into parity with regular full-time employment.<sup>14</sup> The advantages of such an arrangement are:

- ▶ Retention of valued, experienced employees;
- ▶ Greater continuity, because one employee may be able to cover for the other employee in crisis situations involving sickness or work overload; and
- ▶ An expansion of talents in a single position.

Law firms and governmental agencies in Wisconsin have used job sharing successfully.<sup>15</sup>

## Part-time Employment

Part-time employment has been defined as any situation in which an employee works fewer hours per day or per week than those required of full-time employees.<sup>16</sup> The use of part-time positions has been hindered by an inaccurate perception that part-time employees are marginal in ability, attitude, or commitment.<sup>17</sup> In

general, those who do not employ part-time workers view them negatively, and those who employ part-time workers view them favorably.<sup>18</sup> A recent survey of 1,305 firms by the National Association of Law Placement indicated that 96 percent of the firms surveyed offered part-time positions.<sup>19</sup>

In Wisconsin the concept of part-time work varies with the needs of the employee and the employer's notion of what constitutes "full-time" work.<sup>20</sup> The following are examples:

- ▶ Law firms typically expect attorneys to work more than 40 hours per week. One attorney, in order to have additional time for child care, agreed to an alternative work schedule with a firm that required she work only 40 hours per week. She worked the hours during the firm's normal business hours. In another instance, an attorney committed to 30 hours per week and was allowed to choose the days and times according to the attorney's needs and the work that had to be accomplished. Occasionally, this required the attorney to work more than 30 hours in a given week.

- ▶ Law firms often require a minimum number of billable hours per month or year. One attorney, in order to have time for other pursuits, negotiated an agreement allowing a reduced number of billable hours. The firm wanted 1,600 hours per year, but agreed to 1,200 per year.

- ▶ Another attorney, after her child's birth, was unable to work out a reduced schedule with her law firm.

She sought and was given permanent part-time employment in a corporate legal department. The attorney works the same three days each week.

## Telecommuting

Telecommuting has become increasingly popular in recent years.

Telecommuting involves employees working one or more days at their home and communicating with the office and clients via computers, facsimile, and telephone. Please see Chapter 3 for more information on telecommuting.

Employers were asked to identify the greatest benefit to the organization of offering an alternate work arrangement. They responded:

- ▶ "Staff morale is enhanced without drawbacks for employer."
- ▶ "Accessibility and retention of qualified, experienced personnel that might not be affordable or needed on a full-time basis; special skills."

Without the availability of an alternative schedule, some attorneys would have been unable to continue working. In addition, attorneys have reported greater job satisfaction upon working an alternative schedule. Attorneys have noted that the greatest benefit to employers who have established alternative work schedules is that they retain experienced, capable attorneys who often are extremely loyal to the employers who accommodated them. By reducing turnover, the employers are able to retain specialized skills and maintain continuity with clients. The

arrangements provide a variety of financial benefits to the legal employer. Attorneys have also noted that in smaller firms, the part-time arrangement allows for greater financial flexibility. Because work in small firms does not always develop in increments of 2,000 hours, the part-time arrangement may allow firms to handle overloads without the cost of hiring a full-time attorney.

Thus, throughout Wisconsin attorneys are working a variety of alternative work schedules. Alternative work schedules are a benefit to the employee and the legal employer. All that is needed is a plan that meets the needs of those involved and a commitment to these arrangements.

## Use of General Policy Versus Individual Arrangements

With the development of alternative work schedules, a question arises: Should there be a written policy or plan governing all alternative work schedules within the organization? Written plans have advantages and disadvantages.

One advantage of a formal plan is that it tends to produce more even-handed treatment than does an ad hoc approach. A formal plan will provide some certainty for lawyers considering such arrangements and will clarify the expectations of all in the organization. A formal plan acknowledges the organization's commitment to alternative work

schedules, and allows this policy to be used for recruiting purposes. Finally, the plan forces the organization to address and resolve issues surrounding alternative work schedule arrangements. Policies can be made based on the organization's needs and expectations without being heavily influenced by the particular individual's circumstances and capabilities.

The major disadvantage of a written policy is that it often does not allow for enough flexibility. An alternative work arrangement is most advantageous if it meets the individual's specific needs, as well as the employer's. A formal policy made several years prior to establishing a specific alternative work schedule arrangement may not meet the needs of the employee or the existing needs of the employer. For example, an employee may be particularly good at attracting new clients. If the employer has an established part-time compensation plan that does not compensate for new clients, the employee will be treated unfairly and the employer will miss an opportunity to provide appropriate incentives. Failure to compensate for marketing successes risks losing the employee, which is exactly what the alternative work plan is meant to avoid.

Often, both employers and employees oppose establishing a set plan. Employees involved in an alternative work schedule may believe an ad hoc plan is more advantageous to employee and employer than if the employer had established a fixed

plan. Notably, individual employee strengths may not be considered in an established plan. Accordingly, employees may choose to look elsewhere for the alternative work schedule if the employer's plan is rigid and does not meet the employer's needs of the employee.

A reasonable compromise would be for the employer to establish a policy accepting alternative work schedules, provided the schedule meets the employer's needs. This policy would recognize that an alternative work schedule is valuable to the employer. It would lend legitimacy to alternative work schedules, and thereby reduce partners' and peers' concerns about disparate treatment. This policy would allow flexibility to develop plans that meet the individual's needs, as well as the employer's. Finally, it would allow the employer to use alternative work schedules as a recruiting tool.

# Considerations for Every Plan

An employer adopting an organization-wide policy on alternative work schedules may want to establish certain limits, including limits on the individuals who may take advantage of the policy and the times during which the policy will be made available to each individual. Such limits are of more concern to an employer who is creating a general policy to be made available to all eligible employees. Since the policy's terms will be defined in advance, it will be necessary to determine who may take advantage of the policy and when.

## Application to Nonattorneys

This handbook's scope is limited to issues that may arise in connection with the creation of an arrangement for alternative work schedules for attorneys. However, an employer who desires to create such an arrangement will face the question of whether all employees will be eligible for the same arrangement.

The decision about whether the policy should be broad enough to include all employees will depend on the circumstances of each employer. These circumstances include the number of employees, the number of each classification of employee, whether the employer has in place a personal leave and alternative work schedule policy for nonattorneys, and the appropriateness of distinguishing between attorneys and other employees in

light of the employer's overall compensation, advancement, and other personnel policies.

## Seniority of Employees

Availability of alternative work schedules may be limited to employees who have worked for the employer for a certain minimum period of time. One of the advantages of requiring a period of regular full-time employment prior to commencing an alternative work schedule is that the employer will be familiar with the employee's work and value before commencing the alternative work schedule arrangement. Moreover, the employee will know about the employer, its policies and attitudes, the demands of the job, and the need for flexibility in order to perform the job. This knowledge will help to predict what type of alternative work schedule will be successful and to avoid misunderstandings and other problems once the plan is implemented.

There can be disadvantages to prohibiting alternative work schedules for employees with less than the minimum length of employment. Such a rule may preclude the employer from hiring qualified candidates who have children or sick parents and who specifically are seeking part-time employment. Moreover, since there frequently is no relationship between the need for part-time employment and the length of employment, applying the rule may be harsh on an employee with extenuating circumstances during the first year of employment. An employee who needs an alternative work schedule

during the first two years of employment will likely appreciate having the opportunity to do so. The employee may have greater job satisfaction and therefore be more productive than an employee who is told that he or she must wait out the required regular full-time employment period.

One approach to the competing considerations discussed above would be to require a minimum amount of regular full-time employment to qualify for certain types of alternative work schedules while permitting employees to participate in other arrangements prior to meeting such requirements. Another approach would be to make alternative work schedules available to new employees at the employer's discretion.

The employer's stated policy could be to grant requests for alternative work schedules only for employees who have been working regular full-time for one or two years, but to grant other requests under appropriate circumstances. Although this approach creates the possibility that employees who are denied such requests will be unhappy when the requests of others are granted, it permits the employer to make exceptions for employees with special needs or for employees who are especially valuable to the employer.

## Purposes of Alternative Work Schedules

The reasons why an employee may want to work an alternative schedule are limitless. They include health

conditions within the family, a hobby, further education, teaching, writing books, community service, pro bono work, semi-retirement and, in the case of an employee who is not in private practice, the desire to develop a private practice. An employer could create a plan that distinguishes among the various reasons for requesting an alternative schedule.

To illustrate, the employer could distinguish on the basis of: 1) care for a family member; 2) certain specified reasons; 3) any reason; or 4) as permitted by the employer on a case-by-case basis. The employer may want to distinguish between pursuits that may increase the employee's competence or marketability, such as study or writing on a topic relevant to the employee's work, and pursuits the employer believes will be of little value to the employer.

### **Duration of Alternative Work Schedules**

Some employers have placed limits on the length of time that an employee may spend in an alternative work schedule arrangement. For example, an employer may limit an alternative work schedule arrangement to one or two years or limit an alternative work schedule arrangement to the time during which the employee's children are under age 6. In some instances, employers have attempted to impose a one-year limit on an alternative work schedule arrangement and later found that the employee involved was unwilling to return to regular full-time status, causing the employer to either

change the rule or lose the employee. To avoid such situations, an employer should adopt a program that does not arbitrarily limit the duration of an arrangement that may be mutually beneficial to the employer and the employee. To this end, the employer could periodically review the arrangement. At the end of each six- or 12-month period, the employer and employee could evaluate the situation and determine whether the arrangement should continue.

### **Management of Schedules; Coordination of Various Employees**

Depending on the employer's size and budget, the employer may be concerned about the number of employees who work under an alternative work schedule at any given time and the right of those employees to return to regular full-time employment. Since the employer may have a set number of positions to fill or a static workload to be performed, there may not be the flexibility to permit numerous employees to change to regular full-time schedules at their convenience. The employer may choose to address this issue by determining in advance how many employees may take leave or work less than full-time concurrently, or by determining a limit on the total number of full- and less than full-time positions available. As an alternative, the employer could reserve the option of limiting the changes in employees' schedules as necessary to accommodate the employer's needs.

### **Compensation**

Compensation, like the criteria for what constitutes full time, is uniquely determined by each organization and may involve a complex, subjective decision-making process. In formulating alternative work schedule compensation, it is important first to identify all factors that contribute to establishing compensation. Then the alternative work schedule's impact on those factors should be analyzed to determine how the alternative work schedule salary will differ from full-time compensation.

Compensation systems for regular full-time work often consider intangible contributions such as nonbillable projects, extra-hours work created by rush projects, and client development activities. It is relatively simple to apportion a salary based on actual billable hours for full-time employees; it is more difficult to factor in the intangibles.

Factors relevant to establishing compensation for alternative work schedule attorneys include:

- ▶ The amount of expected profit to be generated by lawyers at particular levels;
- ▶ The productivity level at which a firm's attorneys "break even," so that a firm is not perceived as losing short-term dollars as a result of the alternative work schedule;

- ▶ The need for alternative work schedule lawyers, regardless of impact on profit or the break-even point, to retain parity with others at the same experience level so that the value of their experience and seniority is properly recognized;
- ▶ The extent to which the alternative work schedule attorney is able or expected to participate in the nonbillable, after-hours, and client development activities;
- ▶ The effect of fees generated and clients brought to a law firm by alternative work schedule attorneys; and
- ▶ The differences in compensation if the employee is a partner/shareholder.

Once the employer identifies the critical factors in establishing compensation and determines how they will affect the salary adjustment for an alternative schedule attorney, that analysis should be set out explicitly in the arrangement. Vagueness and generalities should be avoided. An effective way to set the proper tone is to state the terms positively rather than negatively. For the issue of compensation, the focus should be on what will be received, as opposed to what will be given up.

Alternative work schedule arrangements can base compensation on a percentage of full-time salary or on an hourly rate. The survey by the State Bar Participation of Women in the Bar Committee asked participants whether they feel a percentage of full-time salary arrangement or an hourly rate arrangement provides a more

equitable situation. A variety of viewpoints were expressed, as indicated by the following responses:

- ▶ “Both can be equitable depending on the needs of both employer and employee. We have used both bases for compensation.”
- ▶ “An hourly rate is preferable because a percentage of salary does not account for overhead and other expenses incurred as a result of switch to part-time arrangement.”
- ▶ “Depends on approximate percentage worked, if near full-time it should be on percentage of salary; if work is transactional and of limited amount, hourly rates seem more equitable.”
- ▶ “For professional positions I prefer a percentage of full-time salary based on expected schedules. I do not want to monitor time sheets for professionals.”
- ▶ “We use the percentage of full-time salary as a base, with possible bonus based on productivity.”
- ▶ “We base it on an hourly rate with benefits prorated according to a percentage of time in pay status. This is the way the state system works for classified personnel. For faculty and academic staff it would be on a percentage of full-time status.”
- ▶ “From the perspective of the firm as a whole and those not on part-time, as well as from the perspective of the part-time employee, the percentage of full-time salary is the most equitable in my judgment,

provided that there is a corresponding percentage of reduction of benefits.”

## Benefits

Alternative work schedule attorneys usually are attempting to accomplish multiple goals: to maintain a professional practice while fulfilling other significant commitments. Accordingly, it is a good policy for the organization to reward lawyers for that dedication by continuing to provide a full benefits package. Such treatment will likely have a beneficial effect on a lawyer's loyalty to the organization over the course of a long and productive career.

Benefits to be considered include:

- ▶ medical insurance
- ▶ disability insurance
- ▶ life insurance
- ▶ malpractice insurance
- ▶ retirement plan
- ▶ vacation
- ▶ bonuses
- ▶ incidentals, including bar dues, parking, club memberships, CLE seminar fees, and so on
- ▶ dental insurance
- ▶ client development (marketing) funds

The continuation of full benefits may be controlled by state or local law in a particular jurisdiction, or by federal law. The issues discussed above relating to benefits during leaves also are applicable here.

Prorating benefits may be an equitable method for handling benefits for alternative work schedule attorneys. Benefits have been

analyzed to be equal in value to as much as 35 to 40 percent of a person's salary. The employer, for instance, may offer to pay three-fifths of the cost of medical insurance for an employee who works three-fifths time, with the employee responsible for paying the balance of the premiums.

The continuation of full employer-paid coverage also may be affected by the terms of a particular insurance contract. For example, an employer's insurance policy may require that each lawyer work a minimum of 30 hours per week to qualify for coverage. Therefore, the employer should review existing benefits policies and applicable law when determining the benefits it will provide for alternative schedule lawyers.

### **Advancement**

An important aspect of an alternative work schedule policy is clarification of its impact on progression toward partnership or other advancement.

Professional growth has the same value whether acquired on a full-time or other basis. Therefore, time spent on an alternative work schedule should be counted as part of an attorney's career progression.

When formulating a policy relating to an alternative work schedule's effect on partnership or other advancement, consider the following options:

- ▶ An alternative work schedule will not have an effect;
- ▶ Working less than full-time will result in a slower progression;

- ▶ Advancement may depend not only on hours billed but also on other value added to the organization, such as pro bono work and potential for client development;

- ▶ Alternative work scheduling will affect the timing of advancement, but otherwise will not have an effect;

- ▶ Alternative work schedules will affect advancement as determined in employer's discretion; or

- ▶ Attorneys working on alternative work schedules will be taken off the partnership or other advancement track temporarily and return, with some equitable adjustment, upon resuming full-time status.

Tradition in many firms dictates that an attorney must be a regular full-time employee to be taken into the partnership. However, if an associate has been given the appropriate training and has gained the skills and garnered the respect necessary to be considered for partnership, requiring the associate to move out of part-time status essentially serves no significant purpose. Furthermore, this requirement is illogical if partners are permitted to work alternative schedules. The bottom line, of course, is this: Does the lawyer have what it takes to be a partner?

Real economic considerations that should be taken into account and generally govern the decision to obtain partnership status include: capital contributions, profit and loss, and management decisions. Discussion of each topic follows.

**Capital Contributions.** Capital contributions of the partners must be taken into account. If an attorney is on the partnership track and working an alternative work schedule, he or she may not desire to contribute the same amount of capital or other property, such as furniture, library, and equipment, to the partnership as those working full-time.

**Profit and Loss.** Another economic consideration for an alternative work schedule employee is his or her interest in the partnership profit and loss. The method of rewarding partners fairly for their services and of imposing a fair share of the practice's costs on them is most important and usually is based on a percentage or commissions. A percentage method would probably work out most equitably for the alternative work schedule employee, since it can be made consistent with the time worked by that employee. However, the commission method also may be viable if an alternative work schedule employee is producing new business and bringing in new clients to the firm.

**Management Decisions.** Another consideration is whether the alternative work schedule employee should have a vote in the management decisions of the partnership. A decision has to be made as to whether each partner, whether regular full-time or working an alternative work schedule, has an equal voice in the management and conduct of the partnership business; the firm also must determine whether all decisions shall be by a majority vote and whether each partner is entitled to one vote.

Overall, the range of economic considerations, as with the variables affecting compensation, may be as varied as the number of partners in the firm.

## Performance Evaluations

The qualities of a successful attorney working an alternative schedule are the same as the qualities of a successful attorney working a traditional schedule. The same performance evaluation program should be appropriate for regular full-time and alternative work schedule attorneys. It nonetheless bears noting that the employer should be alert to performance evaluations that fail to treat the employee who works an alternative schedule fairly.

When the alternative work schedule results in the employee working less than his or her full-time colleagues, the employee's productivity presumably will be lower, and the lower productivity will be reflected in his or her compensation. The employer then should measure the employee's performance with respect to a standard of productivity commensurate with the alternative schedule.

Adjusting the expectation for productivity would appear to be easy enough, but other less tangible performance criteria can be more troublesome. Despite an official policy to promote the balancing of work and the family, some supervisory personnel may, whether consciously or unconsciously, be opposed to mothers working outside the home. Some may feel that an attorney who does not make a 24-hour-a-day

commitment to the law cannot perform up to the standards of the employer. There may be other reasons that supervisors do not wholeheartedly support the employer's alternative work schedule policy.

Given the subjective criteria by which an attorney's work performance is measured, such as professionalism, communication skills, client acceptance, and ability to work with others, the employer must be alert to performance evaluations that are inappropriately affected by the employee's status as an alternative work schedule employee. The employer who is alert to the potential for biased evaluations and who considers the evaluation results critically can avoid management decisions based on biased data. Whether the employer should take any formal steps to alleviate bias in performance evaluations depends on the size of the employer, the nature of the business, and the existing performance evaluation structure.

The following techniques can be used to help protect against bias in performance evaluations. These techniques may make more useful the performance evaluations of all employees and are not specifically designed to address bias against attorneys with alternative work schedules. Each employer should consider which techniques are appropriate to the employer's situation:

- ▶ Encourage evaluators to rid their own evaluations of bias. This simply could mean raising the evaluators'

consciousness, or could entail giving the evaluators an incentive to have the employee succeed. Such an incentive would encourage the evaluator to look past any bias, and consider and take advantage of the employee's strengths.

- ▶ Take steps to ensure that the employee is getting enough challenging work and an opportunity to work with senior members of the department. The employee cannot demonstrate his or her abilities if limited to routine work and excluded from contact with those who will be conducting evaluations.

- ▶ Give the employee specific information regarding negative performance evaluations, including the evaluator's name, if appropriate. The employee then will be better able to defend himself or herself and to refute inaccurate criticisms.

- ▶ Put comments in a written form suitable to be presented to the employee. By requiring that the comments be written, the employer ensures that the criticisms are articulated and discourages vague, unfocused negative comments. The evaluator will be more likely to think through the comments before putting them into writing.

- ▶ Develop a specific list of criteria. Even if the criteria are intangible or subjective, such as "analytical ability," the evaluator will be required to focus on the employee's performance with respect to each criterion and will be encouraged to consider strengths and weaknesses as to each criterion.

► Talk to the evaluator about the reasons for negative comments. As an alternative, require the evaluator to include reasons or examples in written evaluations. Be alert to sexist or otherwise biased comments and note whether the evaluator can support the negative comments with substantial examples.

► Require or permit the employee to make a list of all projects worked on with the evaluator during the evaluation period and submit the list to the evaluator. The list will help the evaluator to consider the entire evaluation period and not focus on one recent event or on events occurring in prior evaluation periods.

► Seek evaluations from those partners for whom the attorney has performed the most billable work (or with whom they participated in a significant client development or pro bono project). Likewise, give the attorney the opportunity to identify evaluators who he or she believes know the quality of the attorney's work and seek input from them. This ensures that those who have seen most of the attorney's work product and those who have seen what the attorney thinks is quality work, whatever its extent, are involved in the evaluation process.

The foregoing discussion is aimed at eliminating inappropriate bias from performance evaluations. An employer should not make personnel decisions based on performance evaluations that are tainted by the evaluator's bias against, for example, working mothers or against fathers who choose to take an active role in

raising their children. In short, all employees should be evaluated equally.

The employer also should look at evaluations critically for the converse reason: to consider whether the alternative work schedule is the problem. If an evaluator is dissatisfied with an employee not because the employee's work is inadequate but because the alternative work schedule is not working in some respect, the employee and employer would be best served by addressing the real problem. If the arrangement is not working because of the evaluator's unwillingness to cooperate, the evaluator should be approached on this issue. If there is a problem with the arrangement itself, the employer and employee may be able to modify the arrangement or the employee's work load and thus address the problem.

## Commencing an Alternative Work Schedule Arrangement

The employer who has a policy relating to leaves and alternative work schedules should have a procedure for implementing the policy. Even an employer with a small number of employees should have the employee who is considering an alternative work schedule prepare a memorandum or other written outline of the proposed arrangement. If the

alternative arrangement is available at the employer's discretion, the writing will serve as a basis for the employer's consideration of the request.

The writing should set forth the type of arrangement desired, the time period for the arrangement, the terms and conditions of the arrangement, the reasons for the request, and any other relevant information. The employer may require a certain period of advance notice, such as 30 days; but if implementing the plan in a shorter period is workable, the parties can do so.

If the alternative work schedule is available at the employer's discretion, the employer typically will consider the type of legal work performed by the employee, existing work loads of employees, the employer's needs, the flexibility of the employee to work as needed, including taking phone calls or doing other work at home, and the employee's seniority.

The policy could provide that the alternative work schedule, if approved, would be implemented initially on a trial basis, subject to review after a certain period, such as

six or 12 months. After the initial trial period, the employer may want to make the arrangement subject to review every six or 12 months on an ongoing basis to ensure that the parties remain satisfied with the arrangement. A periodic review also permits the parties to make adjustments to the arrangement if necessary. For example, if the employee has been working more than originally expected, the employer could make an appropriate adjustment in work load or in compensation. If the employee frequently is required to work on a scheduled day off, it may be possible to change the employee's work load or arrange for a different scheduled day off.

## Other Considerations to Ensure a Successful Arrangement

In addition to tangible financial considerations such as compensation, benefits, and partnership eligibility, numerous intangible administrative and personal concerns may arise in implementing an alternative work arrangement. Some of these concerns are more perception than real. Others, though legitimate, can be resolved satisfactorily if the affected parties mutually:

- ▶ anticipate and address them up front;
- ▶ recognize that flexibility and fairness are the benchmarks of any

successful alternative work arrangement; and

- ▶ provide for periodic assessments to determine whether the alternative work arrangement is indeed being honored.

### Concerns Regarding Career Commitment (or Lack of It)

Given the legal profession's traditional propensity to view the practice of law as a round-the-clock commitment, it is not surprising that one of the most often-cited objections to allowing an alternative work arrangement is that the alternative work schedule attorney lacks, or will be perceived by clients and peers to lack, the requisite commitment to the practice of law.

The perceived lack of career commitment generally is linked to concerns about inaccessibility to clients, scheduling difficulties, and unavailability to other attorneys working on the same project. It appears that most such "problems" are more a matter of perception than reality. The juggling of engagements and periodic absences from the office - and the related inability to receive and return telephone calls - are problems shared by all busy attorneys.

An attorney absent from the office because of an alternative work schedule is no less available than an attorney absent because of work-related travel, depositions, meetings, or trial commitments. Just as the busy regular full-time attorney copes by keeping the support staff apprised of

his or her whereabouts, calling in for telephone messages, and occasionally relying on other attorneys in the office assigned to the same project, so too does the alternative work schedule attorney.

One of the keys to success in any alternative work arrangement is the recognition that the alternative work schedule attorney must remain as flexible as possible to meet the responsibilities of the job. This generally requires sufficient flexibility to take calls at home, juggle calendars (including child-care arrangements) and, when necessary, take work home or participate in rush or after-hours projects. Any alternative work schedule policy should explicitly provide that participating attorneys must guarantee that their work is conducted appropriately, even though this may entail working at home or coming to the office on a nonscheduled day.<sup>21</sup>

The extent of flexibility to be built into an alternative work arrangement is dictated, at least in part, by the nature of the practice. The attorney engaged in a practice that is, by definition or nature, a more "regular-hour" practice, such as estate planning, may require less flexibility, while it is reasonable to expect the part-time litigator to have contingency child-care arrangements or other back-up support to ensure his or her availability on short notice or on days off and during evening and weekend hours.

Concerns may arise over competition for clients, and anticipated negative reactions by clients to an alternative work schedule attorney's perceived

inaccessibility.<sup>22</sup> Yet, experience indicates that most clients do not know how much time an attorney is physically present in his or her office, nor are they concerned about it.<sup>23</sup> As long as the work is handled appropriately and an attorney is available for scheduled meetings or telephone conferences, clients do not become concerned. At times the alternative work schedule attorney may be more accessible on a child's field trip than a full-time attorney involved in legal proceedings on another case.<sup>24</sup> A study to measure client attitude toward part-time attorneys reported no negative reactions.<sup>25</sup> This has been confirmed by attorneys surveyed in northern Wisconsin.

### **Dissatisfaction or Resentment of an Alternative Work Schedule Employee**

There is a tendency to assume that by making alternative work schedule arrangements (with appropriate adjustment in compensation) available, the office or firm is fully satisfying the needs of its alternative work schedule attorneys. This assumption is misleading and, unless examined, may lead to dissatisfaction and resentment on the part of the alternative work schedule attorney and the possible loss to the firm or office of a valuable employee, as well as causing disruption to client and colleague relationships.

A recent study by the Massachusetts Women's Bar Association indicated that women attorneys left their jobs at a rate 70 percent higher than male attorneys.<sup>26</sup> More specifically, women with alternative work schedules left at a

higher rate than women employed full time. However, the same study found that 67 percent of the women who left went on to other legal positions, citing the lack of challenging job assignments as one of the major reasons for leaving.<sup>27</sup>

The obvious lesson is that meeting the attorney employee's need for flexible or reduced work hours is not a substitute for providing the attorney with quality, fulfilling projects. On the contrary, alternative work schedule attorneys, like all professionals, should be provided with challenging, gratifying work assignments commensurate with their abilities and experience. When one considers that many alternative work arrangements call for a time commitment that was once considered full-time practice, there would appear to be little reason not to assign major (albeit fewer) projects to alternative schedule attorneys.

To refuse to assign major projects or to provide only "grunt work" to alternative work schedule attorneys may cause the affected employees to view themselves as second-class citizens perceived by others as only marginally competent or may cause the employee to leave for other, more rewarding work. Assigned work should be reviewed by the employer to ensure that this does not occur.<sup>28</sup>

On the other end of the spectrum, the alternative work arrangement, if not monitored, may lead to the employee's real or perceived exploitation. This, too, may cause the employee to seek other employment.

The practice of law is both consuming and unpredictable, with uncompensated overtime the rule rather than the exception. Hence, there is a very real risk that an alternative work arrangement that calls for less than full-time hours and prorated compensation will in practice be a full-time (or overtime) arrangement, but without commensurate compensation. Regular reviews should be used to ensure that the alternative work schedule is being followed. If it isn't, steps should be taken to reduce the alternative work schedule attorney's work load or to increase his or her compensation.<sup>29</sup> The risk of the alternative work arrangement gradually becoming a full-time schedule is heightened when employers view the alternative work arrangement as a bargain for the employer, that is, a way to obtain the same productivity but at a lower cost.

The risk of the alternative work schedule attorney being or feeling misused can be significantly reduced through a compensation system that fairly compensates the attorney for the time worked. One way to achieve fairness is to compensate the attorney on a percentage of full-time compensation basis for a percentage of full-time hours worked, with the caveat that in the event the attorney bills at some level above the targeted billable hours, the attorney will be compensated for that excess time.

There is a further caveat, however. The goal of an alternative work arrangement is to create the necessary time away from the workplace in order to have time for other obligations. Additional monetary compensation does not achieve this goal. Adjustments in additional time away from work may help in achieving this goal, but will not adequately compensate the attorney for the hardships encountered by him or her if the organization repeatedly fails to honor the alternative work arrangement.<sup>30</sup>

In conclusion, attorneys using alternative work schedules must be responsible for ensuring accessibility to their clients and coworkers and must maintain this contact when they are out of the office. That is not to say that the alternative work schedule attorney must be continually “on call”; rather, the attorney must assume responsibility for handling his or her work appropriately.<sup>31</sup>

Because of the added risks of the alternative work schedule attorney becoming a full-time attorney without the same pay, or being assigned only

“grunt work,” periodic reviews are essential to avoid misuse of the attorney and attorney resentment. The alternative work schedule attorney also must be proactive to maintain the parameters of the arrangement.<sup>32</sup>

The upside of using alternative work schedules is that studies have shown that part-time employees are often more efficient than their full-time colleagues with oppressive work schedules.<sup>33</sup> Alternative work plans may help reduce attorney stress levels, as well as decrease associated health risks.<sup>34</sup> Studies also show that employers allowing employees to balance family obligations and work give rise to greater job satisfaction as well as loyalty to the employer, thus reducing the risk that the employee will seek other employment.<sup>35</sup>

### Peer Resentment

If not thoroughly explained or equitably administered, the alternative work arrangement may provoke resentment by regular full-time peers who may feel that they are being forced to pick up the slack or to bear the brunt of rush, late-hour, or nonbillable projects without the benefit of additional compensation. Employers can deal with this problem in several ways:

- ▶ Educate all lawyers and support staff about the benefits of an alternative work schedule policy and the commitment necessary from everyone to make it work. Staff must understand that these flexible policies lead to retention of experienced and

talented individuals and are seen as positive recruitment benefits;<sup>36</sup>

- ▶ Support all employees with services designed to meet certain basic needs such as child/family care plans, employee assistance programs, health and wellness programs, pretax spending for childcare accounts, and so on;<sup>37</sup>

- ▶ Adopt compensation and promotion policies that reward the full-time attorneys who “go the extra mile,” such as a bonus system that rewards the attorney for excess billable hours or new clients and matters brought into the firm;

- ▶ Ensure that additional staff are available to cover work that requires reallocation when an attorney goes on leave or takes part-time status;<sup>38</sup> and

- ▶ Compensate and provide benefits for part-time work on a pro rata basis. Attorneys on alternate schedules are much more likely to feel fairly treated and to pitch in beyond their scheduled hours if they are compensated accordingly. 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.<sup>39</sup>

Finally, attorneys on alternate schedules must assume responsibility for fulfilling their obligations to colleagues and clients. When not in the office, attorneys need to maintain sufficient contact with the office to determine whether urgent matters have arisen.<sup>40</sup>

### **Returning to Full-time Work**

At the outset, the alternative work arrangement should address whether the alternative work schedule attorney will be permitted or required to return to regular full-time practice. As a practical matter, when the employer approves an alternative work schedule arrangement there may be no way to know what the personnel needs will be in the future when the alternative work schedule attorney may want to resume full-time work. Employers should anticipate and address the following issues:

- ▶ Consider whether there will be a time limit on the alternative work arrangement for those attorneys working less than full-time;
  
- ▶ Determine in advance whether the return to full-time status will be automatic upon the expiration of the agreed upon period or whether a special request will be required. If a special request is necessary, determine:
  - ▶ the procedure for the request;
  - ▶ the timetable for the request;and
- ▶ the criteria for return;<sup>41</sup>

▶ Consider whether there will be a transition period before a lawyer on an alternative schedule resumes full-time employment; and

▶ Consider how the return to full-time status will affect compensation, work assignments, and partnership determinations, and who will make these decisions.<sup>42</sup>

### **Holding Back the Flood Gates**

A concern frequently cited by those who oppose alternative work arrangements for lawyers is that if the employer permits such an arrangement for one attorney, the remainder of its professional staff will soon clamor for the same accommodation. If that were to occur, most employers would be unable to function. Instead, the available research provides little evidence of open flood gates to unprofitable arrangements.<sup>43</sup> Concerns about enormous expenses from overhead and benefit packages also

have been overstated. As a practical matter, shared staff and office space, coupled with improved technologies for teleconferencing and electronic communication, can often solve logistical difficulties.<sup>44</sup>

The ABA Commission on Women in the Profession states, "Except for relatively short periods of their careers, most professionals appear reluctant to sacrifice the income, structure and relationships that come with full-time work. 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."<sup>45</sup>

# Telecommuting and Technology Needs

This chapter defines telecommuting and lists the benefits to employers. Second, it discusses the factors that should be considered by an attorney considering a telecommuting work option and lists some of the pros and cons of telecommuting. Third, the chapter presents a summary of ways for a telecommuting attorney to get organized in the home office environment. Finally, this chapter presents an extensive discussion of the technology needs for the telecommuting attorney.

## Telecommuting Defined

Telecommuting is a generic term used to describe the activity of working for an employer from home, using the process of communicating data and documents over telephone lines through telephone, fax, or modem. Telecommuting can be structured in several ways: the employee may work from a location based across the country from the employer or in the same city; the employee may work a set number of days from home; or the employee may use telecommuting as a way to avoid going in to the office on weekends.

## Employer Benefits

An employer may realize several benefits when offering a telecommuting work option to its employees. First, telecommuting may be used to retain valued employees who might otherwise change jobs because of the demands of personal life or the relocation of a spouse's job. In this way, telecommuting may be used as a defensive move to retain attorneys who would otherwise leave employment due to personal life demands. Second, employers may gain more loyal employees, and experience less turnover, because of the employer's willingness to accommodate a valued employee. Third, telecommuting may be used as a recruitment tool. Finally, because many companies offer telecommuting to their own employees, telecommuting also can be a useful marketing tool for employers, to emphasize a forward-thinking and adaptable attitude towards alternative work arrangements.

## Factors to be Considered/Initial Analysis

When an attorney is considering the work option of telecommuting, the attorney should consider several factors:

### Culture and Attitude

The employer's culture and its attitude toward alternative work options must be taken into account. Any kind of alternative work arrangement requires a great deal of support from the top levels of the organization, including financial and managerial support.

### Client and Colleague Contact

The frequency with which the attorney must meet face-to-face with clients or others should be determined ahead of time. If a majority of each day is spent in face-to-face meetings, and such meetings are required by clients or mandated by others, telecommuting on a regular basis may not be a viable option.

### **Client Communication**

If much of the attorney's practice involves face-to-face meetings, telecommuting may be difficult for that attorney if most client needs cannot be handled over the telephone or through email.

### **Individual Work Habits**

Some attorneys need the structure of the main office and the in-person support of an assistant to be effective. Still others may not be comfortable doing document revisions themselves or may require the presence of other attorneys to perform their work.

### **Children**

If children are at home, it is recommended that a caregiver be hired to ensure a certain amount of dedicated work time is available to the telecommuting attorney.

### **Work Area**

Availability of a suitable work area is a must. Regular telecommuting is almost impossible to do if there is only one telephone line to the house or if the work will be performed at the kitchen table. See below for a discussion of how to organize the work area.

### **Technical Support**

Technical support from the office is vital in case the computer freezes just as the last revisions to a final document are being made.

### **Technology**

Even with a great deal of technical support from the employer, a telecommuting attorney must be comfortable with technology and be computer savvy enough to change printer cartridges, dial-in to the employer's network, and solve minor computer glitches. Such skills are in addition to the typing skills needed if the attorney will be drafting his or her own documents.

### **Continuity of Work**

An attorney contemplating telecommuting should determine where his or her work originates and whether the work will continue to come to the attorney once telecommuting begins. Some attorneys and some clients are not comfortable with the idea of an attorney not being in the office, and will not give work to telecommuting attorneys. If a majority of an attorney's work comes from a partner in the main office who will only give work to attorneys who are physically present in the main office, the telecommuting attorney's work supply may disappear.

### **Expenses**

Determine ahead of time who will bear the expense of setting up a home office and the overhead expenses at the main office. Some firms or employers may charge a telecommuting attorney for the cost of the employer maintaining office space at the main office while the attorney is telecommuting. In addition, as discussed below, the cost of setting up a home office is not inconsequential; therefore, it should be clear which expenses are to be borne by the employer and which expenses are to be borne by the employee.

## Pros and Cons of Telecommuting

Once an attorney has decided that a telecommuting work option is possible, it is beneficial to consider the pros and cons of telecommuting. The chart at right provides a summary of the positive and negative aspects of telecommuting.

Although attitudes are slowly changing, there is still a certain stigma attached to telecommuting. Many firms and attorneys view telecommuting attorneys as not committed to the practice of law; that by not sacrificing everything for the job, they are somehow second class attorneys. One could argue that telecommuting attorneys are more committed to the practice of law, because they expend a great deal of effort to remain practicing law, rather than walking away.

Others view telecommuting as harmful to the collective and collaborative practice of law; that if an attorney is not personally present in the office, the attorney cannot contribute to discussions or group meetings. Yet with the use of teleconferencing and email, communication between telecommuting attorneys and the main office can be instantaneous. Still others believe that an attorney cannot possibly be working when at home; that the lure of unpaid bills or household projects will be too much to ignore. The only way to defeat such an attitude is to prove that work is being done through billable hours or other work accomplishments.

Pros and Cons of Telecommuting	
Positives	Negatives
No travel time	Frustration when computers/communications go down (may result in attorney needing to go into the office unexpectedly)
Can attend to personal commitments and still work a full day	May affect partnership track or jeopardize advancement
Can more easily set aside blocks of uninterrupted time for projects requiring intense concentration	Does not have the structure of office routine to help keep focus
Can be more creative outside of an office setting	Difficulty establishing boundaries for friends, family, and neighbors
Productivity can increase because the lack of commuting time means more time can be spent performing work	Easy to work excessive hours because always "at work"
Can be a less stressful environment than in the office	Stressful if needed materials are accidentally left at the office or if computer or communication glitches occur
Can balance competing demands of work and home and can ease personal crisis situations	Difficulties if a client requires an emergency meeting at the office
Can increase flexibility to work when the attorney is most energetic and creative	Easy to feel isolated
Can avoid late nights or weekends in the office	Too easy to work late nights and weekends at home
Reduces start-up time in the morning	Increased costs to employer
Can be used either on a regular basis or on an as-needed basis to deal with crisis situations	Can lead to people forgetting who you are

## Initial General Suggestions

Once an attorney has decided to telecommute and has worked out an arrangement with the employer, these suggestions can make the arrangement a success.

### Attitude

The attorney should approach telecommuting with the right attitude: make a commitment to serve clients' needs, and be determined to make the arrangement work. One of the best ways to make the arrangement successful is to be accessible to clients and attorneys in the main office. Make sure you can be reached at all times and make it convenient to reach you through various means such as telephone, fax, email, or pager. Also, be flexible in your schedule; you must be willing to change days in the office if necessary for a client meeting.

### Organization

Be organized and know what you need to take home with you in case a client calls. Be organized at the main office, too, so your assistant can locate and forward to you any materials that you need. It helps to create routines at home that replace your office routines, such as where you place completed work and when you write up your charges for the day. Also, scheduling meetings in advance as much as possible, so that meetings can be grouped on days when you are in the main office, can greatly improve your organization.

### “Face Time”

Make sure you have “face time” in the main office. Come in to the main office on set days (for example, Tuesdays and Wednesdays) so people can anticipate your presence in the office. Strive to attend departmental or firm meetings or attorney lunch programs. Make sure to use the time in the office to continue mentoring and training younger attorneys and to participate in administrative responsibilities. Keep up your informal ties with colleagues, through lunches or casual office visits. Most of all, don't hide in your office; use the time spent at the office to see friends and colleagues so that people remember you.

## Getting Organized

For telecommuting to be a successful work arrangement for the employer and employee, the employee will need to create a home office environment that allows for productive work. Envision something more than just plugging in your laptop in front of the television. The employee should view going to work in his or her home office with the same tenacity as going to work at the employer's office. This section provides some suggestions aimed to help the employee focus on creating a physical work space in his or her home. Once the work space is in place, the employee should strive to keep it clean, orderly, and organized. These concepts may appear rather basic, but are nonetheless critical to the success of the employee's telecommuting arrangement.

Additionally, telecommuting requires that you wear many different hats besides being a lawyer. When working from home, you will not have an administrative assistant to help with your filing, or a secretary to do your typing, or a technical support staff to help with computer issues. To succeed as a telecommuter, you will need to file your own paperwork, type your own work using word processing software, and perform basic computer skills on your own, as well as perform legal work and meet any billing expectations.

## Creating a Work Space at Home

The following tips should be considered in creating a work space in your home.

### Location

You know what they say: location, location, location. Do you have an extra bedroom or unfinished space in your basement that can be used for a home office? You will need a physical place where you can go to work. The place should provide an environment where you will be able to concentrate for several hours without interruption. Preferably, your home office should be in a separate room with a door that you can close to any distractions that may interfere with your ability to concentrate.

## Daily Routine

Each work day you should have a daily routine with specific hours of work, just as you would at your employer's office. Set aside a block of time when there will be no interruptions and you can complete your work. The advantage of telecommuting is that you can structure your own work hours. The key is keeping to a schedule. It is a good idea to structure your work hours based on when you tend to be most energetic and creative, because working from home may present new challenges to your motivation level and an array of distractions that you will need to disregard in order to stay focused on your work.

## Prioritization

Use to do lists and prioritize your work. At the beginning of each work week, make a list of all the projects and tasks that you would like to complete. For any work that is a high priority or critical, mark it as a priority to work on first. Next, move to the less critical projects or tasks. As each "to do" is completed, mark it finished. As new work is received, add it to your list. Keep track of your billable hours, if you are required to do so.

## Calendar

Calendar everything and review it daily. Maintain a calendar of all your appointments, meetings, teleconferences, and deadlines. Review your calendar on a daily basis to stay on top of everything that is scheduled.

## Technology

Rely on technology. Please refer to the technology section of this handbook, which discusses the technology needs you should consider for your home office. Use technology to help you work most efficiently. It is advised that you make friends with your employer's Help Desk staff, because you may need their assistance more than you would expect.

## Child Care

If you have young children at home, you will need to arrange for child care. Working from home does not mean you can care for your children while attempting to complete your work.

# Maintaining a Clean Work Space

## Desk

Maintain an orderly desk. Do not let papers pile up. Focus on things that you need to handle right away versus those that can be filed and dealt with later. If your office becomes out of control, focus on one area each day until you create an organized work space again.

## Routine Filing

Use a routine filing process. Implement and use a filing system designed for easy retrieval of

information versus storage. Find a system that works for you and use it.

## Multiple In-boxes or Files

Use multiple in-boxes or files. Incoming mail should be organized in one in-box; use additional in-boxes or files for reading materials, projects, and cases. It is a good idea to use separate in-boxes or files for each project or case that you working on.

## Tickler System

Set up and use a tickler system. To stay on top of your work load, use a tickler system that systematizes deadlines on a daily, weekly, monthly, and yearly basis to help you focus on when work needs to be completed and to avoid missing deadlines. Review your tickler reports often and add to them as new work is scheduled.

## Email Folders

Clean out email folders. On a regular basis, purge or archive your incoming and outgoing email folders. To avoid unnecessary clutter, if you currently print and save a hard copy of emails that also are saved on your computer, streamline your process and pick one storage method, but do not use both. If you save emails on your computer system, create folders by subject matter or client name to keep your emails organized.

### **Word Processing Directories**

Organize your word processing directory to easily locate documents. Your directory also should be easily navigable for your staff to access your documents. Regularly archive old documents onto a CD or disc to avoid saving hundreds of documents on your computer. Archiving ultimately will result in your using a storage system, which also is recommended.

### **Time Wasters**

Eliminate time wasters. Do not spend time that should be allocated toward productive work reading junk email or nonpriority email that should be read after your work is completed. If you are not as productive as you would like, note what is getting in the way of your productivity and then strive to eliminate it or deal with it after your “billable” work is completed.

## **Staying Organized**

### **Date Correspondence**

Date all correspondence. Use a date stamp to keep track of when you receive mail, federal express packages, and other correspondence. This will help you keep track of when you receive specific correspondence and documents as well as prioritize your tasks when responding to correspondence and completing your work.

### **Purge Documents**

Purge your documents. If you have email or word processing documents saved on your computer, why keep a hard copy? Toss all hard copies that can be easily retrieved by electronic means. Or, delete electronic copies if you prefer to keep hard copies.

### **Divide It Up**

Large client or project files should be subdivided into interior file folders and labeled, so you can easily retrieve documents, work more efficiently, and stay organized. The interior file folders can be labeled either by recording the various steps or stages of the project or, if by client matter, by including labeled folders for correspondence, expenses, draft documents, documents sent to client, documents filed with the court or government, and so on.

### **Wrap It Up**

At the end of a major project, presentation, or case, organize and file your paperwork. By doing so, you will keep old projects from piling up around you and simultaneously prevent clutter from developing in your office.

### **Straighten Your Desk**

Straighten your desk at the end of each day or work week. Regularly set aside a few minutes to stay on top of filing and keep your work space in order. This will help you stay orga-

nized. This routine also will make it easier to start the next work day or dive into the next work week in an orderly, organized work space.

## **Technology Needs for the Telecommuting Attorney**

### **Issues to Consider**

The technology needs of the telecommuting attorney will differ for each person and for each type of practice. This section does not attempt to provide a solution for everyone, but instead identifies topics and issues to consider while planning.

**Connection to Firm.** One of the most important factors that will affect a telecommuter is the connection maintained with the lawyer’s law firm. Many permutations can occur. For example, the telecommuter may only visit the office once a week, or may instead work remotely only one business day per week. Some telecommuters may appear at the office only for staff meetings, while others may maintain regular office hours. The particular arrangement will have an obvious effect on the equipment and supply needs of the telecommuter.

**Type of Work.** The type of work performed also will have an impact on the technology needs of the telecommuter. For example, the attorney who practices intellectual property law will have totally different needs than the attorney who has a general practice. For some, the telephone and fax machine will be the most important pieces of equipment, while for others, only the best and fastest complete home office setup will do.

**Equipment.** Another factor that will affect the equipment needs of the telecommuter is the expectation of the firm's partners regarding communications and accessibility. If a partner expects that the telecommuting lawyer will be constantly available to the partner, others at the firm, or clients, then that lawyer must have the necessary equipment for that to occur. A cellular phone with text messaging may be mandatory, as might wireless capabilities for access to email, such as a Blackberry. In other situations, and again depending on the lawyer's particular practice, less frequent communications will be acceptable and the equipment used will be different.

**Clerical Support.** Availability of clerical support from the firm also will affect the telecommuter's technology needs. Will support staff be provided, and if so, at what level? Will written products be finalized by a secretary or paralegal at the firm? How will postage, copies, or other routine requirements be accomplished and paid for? Can the firm afford to pay

for clerical support for someone who will not be in the office full time? All these issues must be considered and answered by every lawyer who wishes to present a telecommuting plan.

As a practical matter, most telecommuters must be prepared to engage in work that might otherwise be passed on to support staff in an office setting. Dictating letters, briefs, and other documents probably will not work for the telecommuter, and the lawyer doing his or her own drafting at a keyboard may be the only way this work gets done. This aspect alone may cause many older partners to have a negative opinion of telecommuting. Attitudes about lawyers drafting on a PC or laptop are changing, however, and keyboarding proficiency may assist a telecommuter to overcome this hurdle. If the lawyer considering telecommuting already does not dictate documents but drafts on his or her PC or laptop at the law firm, the change to telecommuting will not be drastic, and this issue will not be as troublesome.

### Basics

This section discusses the types of equipment useful in telecommuting. To assist in that planning, the equipment is separated into two groups. The first group, the "Basics," includes those pieces of equipment that every telecommuter must have at his or her disposal in the remote office. The second group, dubbed the "Better than the Essentials," is the equipment that could be considered as something a telecommuter can live without but that would be very helpful.

Of course, the caveat that every attorney's needs will differ based on practice and circumstance still applies. Every telecommuter should purchase and use the best equipment that his or her budget and circumstances will allow. Nothing will threaten the success of a telecommuting venture more quickly than an equipment failure.

The telecommuter could help keep costs down by checking if his or her law firm has any cast-off or surplus equipment available for home use. While this arrangement is not likely to provide the telecommuter with the most up-to-date equipment, the cost savings may be a boon to both the law firm and the employee.

**Computer Dilemma.** The most vital piece of equipment for a telecommuter is a computer. The decision that each lawyer must next make is whether that computer will be a PC or laptop. The most important and obvious consideration is the attorneys' portability needs. If the work demands mobility of data, then a laptop will be the easy answer. If there will be frequent contacts with the office and the lawyer is not provided with a network link with the law firm, the laptop will be essential. However, if the telecommuting will be confined to a more limited amount of time, or the type of practice does not demand mobility or portability, then a PC may be a viable lower cost alternative.

Another consideration will be the cost. In presenting the option to telecommute, one alternative is for the lawyer to use a PC he or she owns instead of asking the firm to pay

for a new PC or laptop. Other firms already provide laptops for lawyers who travel.

Finally, a lesser but still important consideration is the telecommuter's home office setup. If space in the home office is limited, then a laptop may be the better answer. A laptop can be stored when not in use, freeing table or desktop space for other purposes, such as collating or drafting of multiple-page documents.

**Telephone.** The lawyer attempting to sell the concept of telecommuting to his or her law firm will probably have to provide assurances that he or she can be easily contacted by colleagues and clients. A primary consideration for the telecommuter will be what type of telephone setup to use and how many phone or data lines are needed. Again, several permutations are possible.

A separate phone line for the telecommuter's business use is optimal and highly recommended, but may pose a financial burden on some. If two phone lines are used, then the telephone equipment choices get a bit more complex. A multi-line phone installed in the home office allows home and office calls to be retrieved at the same phone. Two phone lines allows simultaneous telephone calls and faxing or Internet connectivity, if the Web connection is via a phone modem. Another option, albeit one that is highly discouraged, is to simply use the home phone line, a solution that may be less expensive but which has some obvious difficulties. The telecommuter must weigh all options and determine what is best

for his or her practice needs or to avoid potential problems.

Finally, a cell phone devoted only to business purposes, especially when mobility is important, may be better when cost is a concern. The option of a cellular over or in addition to a land line is an attractive choice for many and probably already is being used to supplement home and office land lines. The telecommuter may prefer to use a cellular telephone service for his or her business use, instead of having a dedicated land line installed for the home office. This is especially true of an office setup that uses a cable, satellite, or other broadband Internet connection.

It is vitally important that the telecommuter have a reliable system for receiving, saving, and accessing messages from clients or the law firm. Factors such as cost, availability, and reliability must be weighed. For example, voice mail through an outside vendor allows the caller to leave a message even if the telephone line is busy with another call, a distinct advantage over an answering machine. Also, voice mail operates even if there is a power outage at the home office and is more easily accessed from remote locations than is an answering machine. Where voice mail is not available or is cost prohibitive, the telecommuter may have to settle for an answering machine. If the nature of the telecommuter's practice is such that there will be little need for clients, partners, or associates to call, this may allow funds to be applied to a technology that will provide greater benefit.

**Printer.** Unless the telecommuter will have complete support staff assistance from the law firm, a printer is an essential component. The telecommuter can choose between three product types: laser printers, inkjet printers, or multi-function machines that combine a printer (usually inkjet), fax machine, and scanner into one compact unit.

To make an appropriate selection, the telecommuter should consider whether he or she will be producing drafts of documents or final copies ready to disseminate to clients, courts, or other lawyers. If only drafts of file copies will be printed, the quality of an inkjet printer, which allows the versatility of both color and black ink, may suffice. However, if there is a need to print final versions of letters, briefs, or other documents, the quality, speed, and reliability of a good laser printer may be essential. Similarly, laser toner cartridges last much longer than inkjet cartridges and are less expensive per page over time. The telecommuter should consider how long he or she expects to work from home before making the large capital investment in a laser printer, which may be overkill in the home office.

The telecommuter also must consider other questions when selecting a printer. For example, will printing with color be required? What is the budget for replacement cartridges or toner? How much space is available in the home office for peripheral devices? Space availability may be one of the most important considerations regarding a printer.

**Web Connection.** In most instances, a telecommuter will find that a connection to the Internet is one of the more important components of the home practice. The ability to do legal research online, to access other informative references, and to use email for contact with colleagues and clients make the connection to the Web an indispensable tool for all lawyers, especially to those working away from a law firm or office setting. However, as with most technological devices and methods, there exist a myriad of choices (such as speed, cost, availability, reliability, and so on) for Internet connections, and therefore decisions to be made. The lawyer must analyze his or her needs to determine exactly how that connection will be made.

The most important considerations are the connection speed and expense, as well as what connections are available in the telecommuter's geographical location. While a broadband connection may be desirable, it isn't available in some more rural locations. A satellite connection may help, but be too expensive for the telecommuter or law firm to justify. In that instance, the slower speed of the modem connection may be the only option.

### **Better than the Essential**

Fax machines, scanners, multi-function machines, personal digital assistants, and copy machines may greatly benefit a telecommuter, but are not essential to the success of a telecommuting venture. The nature of the practice, the size of the budget, and the expectations of the law firm

will affect the telecommuter's determination to use the equipment discussed in this section.

**Fax Machine.** To decide if a fax machine is essential to the home practice, the lawyer must ascertain if there will be a frequent need to rapidly transfer hard copies of documents to clients, colleagues, or staff. If there is, and the documents cannot be reduced to a format that would allow them to be sent via email, then a fax machine will be required in the home office. An alternative, which will depend on the telecommuter's comfort level with email, is faxing with his or her PC or laptop. This will require software, such as WinFax, to give the PC or laptop this fax capability, and also requires the use of a scanner if the documents are not in electronic format.

The telecommuter with clerical support at the law firm also may be able to use that clerical support for his or her faxing needs.

### **Scanner and Multi-function**

**Machines.** A scanner may become a necessary part of the telecommuter's home office. Fortunately, scanners are relatively inexpensive. Two main scanner types exist: flat bed scanners, where each page is placed directly on the glass of the scanner; and auto-feed scanners, where documents can be either loaded in a holding bin and automatically fed through the scanner or manually placed on the glass. Flat bed scanners work best if the document is part

of a book or larger document or if only a couple of pages are scanned at a time. However, flat bed scanners also have a larger footprint on the desk or work area, and this must be considered when space is limited.

Multi-function machines usually combine a scanner, fax machine, and printer/copier. The advantage of a multi-function machine is the space savings in the home office. The main disadvantage is the loss of all functions if the unit is taken to a service location for repairs.

**Copier.** Whether the home office has a stand alone copy machine will depend entirely on matters of immediacy, quality, frequency of use, space, and budget. For some, the copy machine may be essential. For others, and especially for those who live in an urban area, an occasional trip to a copy shop or use of the law firm's copier may be better and less expensive options. A copy machine, more than any other piece of equipment discussed in this section, represents a large on-going expense for maintenance and supplies. Using a scanner and printer attached to the PC or laptop is an alternative, but it is usually a much slower alternative that also can have varying results. For speed and quality, a copy machine may be essential to the telecommuter's home office, especially if used often.

**Personal Digital Assistant (PDA).**

For the lawyer who does not have or care to lug around a laptop, a PDA may fulfill his or her need for a portable, reliable calendaring and address book or task list software. Some cellular phones also function as a PDA, which helps to reduce the equipment a telecommuter carries. The PDA also replaces the need for a separate calculator, and with the addition of a keyboard, can serve many of the functions of a laptop.

**Everything Including the Kitchen Sink Considerations**

The lawyer wishing to start telecommuting must be concerned with other matters collateral to the use of technology. In most cases, these matters are not an issue for the lawyer who practices in a law firm, because the firm partners, managers, or administrators will have already resolved the issues. The issues can be grouped into three categories: security of data, personal safety and comfort, and expenses.

**Security of Data.** The home practitioner must have a reliable system in place for backing up all data and securing that back up. Offsite storage of the backup media, whether that is in CD, tape, Zip, or other format, is essential. An easy way to accomplish this is to mail or deliver the backup media to your main office.

The telecommuter must use a firewall or other similar device to guard electronic data from unauthorized access by hackers or other electronic intruders. At the time of this writing,

innovations are being made with virtual private networks, which can establish a secure link between a home office and a network at a business or law firm. The telecommuter should fully analyze all options available and use the best, most affordable option that will secure his or her computer and the data stored there.

**Safety and Comfort.** Proper ergonomics should be a consideration of everyone who establishes a home office for telecommuting. A comfortable chair, a work surface, and proper lighting are all important considerations for the home office. Ensuring all of these conditions will probably require the telecommuter to lay out some capital in the event that the law firm is unwilling to provide equipment for the home office. However, a law firm should be justifiably concerned with a workplace environment that it cannot control, because the potential for worker's compensation claims continues to exist for employees working out of their homes rather than in the office setting.

**Expenses.** A determination must be made as to who will insure home office equipment from casualty loss. If the telecommuter purchases the equipment for use in the home office, will the law firm cover losses or will the telecommuter's homeowner's insurance be expected to cover any losses? If the latter, then the telecommuter must either be prepared for an increase in his or her homeowner's

insurance coverage or be able to purchase a separate policy or rider to cover losses. If clients will visit the telecommuter's home, the telecommuter will definitely want to examine his or her liability coverage to ensure adequate protection in the event of an injury to a client.

Deciding who will bear the expense for miscellaneous, yet still important items, such as supplies, software licensing, and technical support for the equipment used in the home office, is important and should be made beforehand. All are certain expenses and not all are fixed. The law firm and telecommuter must acknowledge and discuss these issues both before and during the time spent telecommuting.

Another inevitable and potentially costly expense is the cost of the connection with the law firm's computer network. A connection with a network poses some obvious security concerns for the law firm, and the expense to make the network secure must be acknowledged by the lawyer proposing to telecommute, if the law firm has not already solved this issue.

## Helpful Links and Resources

There are many resources available in print and on the Web for lawyers considering telecommuting or for law firms that wish to develop telecommuting as a cost saving or employee-friendly option. A nonexhaustive list of Web sites and resources follows. Anyone considering the option of telecommuting will benefit from doing his or her own research.

### American Bar Association

This organization has several books available on the subject of home offices and telecommuting. Visit the ABA Web site at [www.abanet.org/](http://www.abanet.org/).

### Telecommuter-maintained Sites

These sites are written by individuals

who are experiencing telecommuting first hand, but who are not necessarily lawyers.

- ▶ [www.telecommuting.about.com/library/weekly/aa060701a.htm](http://www.telecommuting.about.com/library/weekly/aa060701a.htm)
- ▶ [www.workingfromanywhere.org/](http://www.workingfromanywhere.org/)
- ▶ [www.homeworkers.org/](http://www.homeworkers.org/)
- ▶ [www.gilgordon.com/](http://www.gilgordon.com/)

### State Governments and Agencies

Some state governments and their agencies endorse telecommuting as a way to protect the environment from pollution by automobiles, and therefore provide information to employers and employees for assistance. See an example at:

- ▶ [www.dot.wisconsin.gov/travel/commuter/es-tele.htm](http://www.dot.wisconsin.gov/travel/commuter/es-tele.htm)

### Private Organizations

Some private organizations also have endorsed or studied the idea of telecommuting and provide information regarding its benefits. Examples follow:

- ▶ [www.langhoff.com/moresurveys.html](http://www.langhoff.com/moresurveys.html) (survey results on telecommuting)

- ▶ [www.langhoff.com/faqs.html](http://www.langhoff.com/faqs.html) (list of frequently asked questions and links)

### Technological Needs

There is a great deal of information on the Web about the technological needs of telecommuters. Some examples are:

- ▶ [www.bcentral.com/articles/networking/109.asp](http://www.bcentral.com/articles/networking/109.asp) (article, "6 Things You Need in a Remote Access Package")
- ▶ [www.bcentral.com/articles/networking/108.asp](http://www.bcentral.com/articles/networking/108.asp) (article, "Remote Access Can Broaden Your Company's Reach")
- ▶ [home.techies.com](http://home.techies.com)
- ▶ [www.quintcareers.com/telecommute\\_jobs.html](http://www.quintcareers.com/telecommute_jobs.html)
- ▶ [www.entrepreneur.com/article/0,4621,304978-2,00.html](http://www.entrepreneur.com/article/0,4621,304978-2,00.html) (equipping the home office)
- ▶ [www.entrepreneur.com/article/0,4621,297660,00.html](http://www.entrepreneur.com/article/0,4621,297660,00.html) (firewalls for home PC security)
- ▶ [www.bcentral.com/articles/komando/108.asp](http://www.bcentral.com/articles/komando/108.asp) (equipment for the home office)
- ▶ [www.homegain.com/info\\_center/agent/dos\\_donts/show\\_article](http://www.homegain.com/info_center/agent/dos_donts/show_article) (article, "Top Ten Dos and Don'ts for Telecommuting")

# 4 Checklist for Leave and Alternative Work Schedule Policies

## Using “Lawyerly” Drafting Skills

Many principles that serve lawyers in drafting contracts and other legal documents for clients also will be valuable in drafting a policy or plan for leaves or alternative work schedules. The writing should accomplish the following goals:

- 1) Put the arrangement into a written form for all parties to read and understand. This ensures that the parties are in accordance.
- 2) Address issues that may arise in the future. This requires the parties to consider and address contingencies at the outset, limiting the opportunity for disputes later.
- 3) Spell out the parties’ obligations. This encourages future compliance because each party is proceeding as previously agreed.

These are noble goals and require skills at which many lawyers are well-versed. These goals should be part of any leave or alternative work schedule drafting project. However, the employer and employee are more than just parties to an arm’s length contract, especially in the context of practicing law. They are coworkers in tasks such as negotiation, litigation, problem solving, and perhaps most importantly, client service (whether the “client” is another department in a corporation, a government agency, or a private client in a law firm).

Most attorneys work with other attorneys to provide a variety of legal services, with various deadlines, under circumstances that defy delegation of work loads and responsibilities by prior agreement. Thus while the employer and employee, who both usually are attorneys, should have an agreeable written arrangement, the writing will not be a

substitute for the give and take usually associated with legal work.

The employer who is drafting a policy applicable to employees in general (as opposed to an individual arrangement) should keep in mind the considerations applicable to general employee policies. The policy should, for example, be clear, concise, and nondiscriminatory. Moreover, the employer should try to anticipate issues that may arise in the future. For example, if the policy is drafted as the result of a woman’s request for leave to recuperate from childbirth and care for her newborn child, the employer should consider the policy’s applicability to adoptive parents and to fathers who do not need the recuperation time but who may want time to care for their children.

## Checklist for Leave Policy

Does the federal or state Family and Medical Leave Act apply to this company? If yes, applicable law will govern the following questions:

1) What types of leaves will be available?

- childbirth or adoption-related leave
- family-care leave
- medical leave
- personal leave

2) What are the eligibility requirements for the particular leave?

3) What is the maximum length of leave to be permitted? May accrued vacation be added to the leave?

4) Which leaves will be compensated?

- full or partial compensation
- continuation of benefits

5) What procedures must be followed prior to the leave?

- advance notice
- advance approval
- health care provider certification
- form completion

6) Does the proposed policy comply with applicable law? What documentation (medical or otherwise) will the employee need in order to return from leave?

## Checklist for Alternative Work Schedule Policy

- 1) What types of alternative work schedules will be permitted?
  - flextime
  - compressed work week
  - job sharing
  - part-time
- 2) Must the employee have scheduled office hours?
- 3) What are the requirements for nonbillable/administrative work?
- 4) Who will be eligible for alternative work schedules?
  - lawyers
  - management (supervisory lawyers, partners, shareholders)
  - nonlawyers
  - only employees with sufficient seniority
  - only employees requesting leave for approved purposes
- 5) What will be the maximum duration of the alternative work schedule?
- 6) What are the procedures for return to full time?
- 7) Will there be any alteration of the performance evaluation procedure?
- 8) What adjustments will be made to compensation?
  - based on hours worked
  - based on fees collected
  - based on clients generated
- 9) What benefits will be continued?
- 10) What will be the effect of the alternative work schedule on the employee's advancement?
- 11) What procedure must be followed prior to commencing an alternative work schedule?
  - advance notice
  - advance approval
  - form completion
- 12) Will there be periodic reviews of the success of the alternative work schedule arrangement?

# Samples for Leave and Alternative Work Schedule Policies

The sample forms presented here may be useful for employers in drafting their own leave and alternative work schedule policies.

**Sample Leave Policy.** This sample is based on the written policy used by a law firm, and it covers leaves for maternity and family-care purposes only. The language could be revised to address other types of leaves.

In addition to the basic provisions addressed in the accompanying sample leave policy, the leave policy could address any other applicable issues, such as what responsibilities the attorney who will be on leave will have to assist with the transition of files, respond to inquiries from home, and so on. Many of these issues will be best addressed on a case-by-case basis.

**Sample Alternative Work Schedule Policy.** This sample policy is based on a policy developed by a firm that employed several alternative work schedule attorneys over time.

An employer using this sample alternative work schedule policy may want to address other issues, as appropriate. The employer also may want to state that it reserves the right to end the alternative work schedule arrangement at any time.

Employers can modify the introduction provided below to suit either a leave policy or an alternative work schedule, or both.

## Introduction

\_\_\_\_\_ recognizes that flexibility in scheduling is necessary and desirable to permit attorneys to respond to certain life demands. Reasonable efforts will be made to accommodate leaves and alternative work schedule arrangements requested for the purpose of \_\_\_\_\_.

The object of this policy is to strike a fair balance between the business and economic needs of \_\_\_\_\_, the demands and expectations of our clients, the impact on other attorneys in the organization, and the needs and goals of the attorney requesting the scheduling change.

\_\_\_\_\_ will continue to offer attorneys participating in leave or alternative work schedule arrangements opportunities for professional growth. The attorney is expected to maintain the same degree of professionalism and client loyalty as any full-time attorney. Both the attorney and \_\_\_\_\_ are expected to offer sufficient flexibility to ensure that the interests of \_\_\_\_\_ are met and that the attorney is able to substantially preserve that which has been agreed upon.

## Sample Leave Policy

**Paid Maternity Leave.** It is the current policy of \_\_\_\_\_ to grant paid maternity leave to attorneys who have given birth for the period of pregnancy or maternity-related medical disability or \_\_\_\_ weeks, whichever is longer. In the event of medical disability beyond six months, the long-term disability policy shall govern.

**Paid Parenting Leave.** It is also the current policy of \_\_\_\_\_ to grant paid parenting leave to attorneys who have not given birth (fathers, adoptive mothers) for up to \_\_\_\_ weeks from child's date of birth or arrival.

**Unpaid Parenting Leave.** It is also the current policy of \_\_\_\_\_ to grant unpaid parenting leave to attorneys who desire to extend their maternity or parenting leaves for up to \_\_\_\_ months after the end of the paid leave.

**Total Leave.** Total maternity and parenting leave shall not exceed \_\_\_\_ months.

**Continuation of Benefits.** Subject to the provisions of the applicable plans, \_\_\_\_\_ shall continue all fringe benefits for the period of paid leave. In the case of unpaid parental leave, \_\_\_\_\_ will, subject to plan provisions, continue all fringe benefits for up to \_\_\_\_ months. Continued group health coverage may be available, at the attorney's expense, for leave periods that extend beyond \_\_\_\_ months.

**Effect of Leave on Career Progression.** Approved leave time of up to \_\_\_\_ months shall not be considered to have interrupted normal career progression. Leaves in excess of \_\_\_\_ months may be a factor for the purposes of the timing of career progression, but shall not otherwise affect progression.

**Approval of Leaves.** Requests for maternity leave or parenting leave must be submitted to \_\_\_\_\_ for approval at least \_\_\_\_ days (to the extent feasible) before the anticipated starting date.

## Sample Alternative Work Schedule Policy

**Eligibility.** Attorneys at \_\_\_\_\_ are eligible to be given consideration to work less than full-time on a reduced compensation basis. \_\_\_\_\_ will consider requests for alternate work schedule arrangements on an ad hoc basis, bearing in mind the short- and long-term best interests of \_\_\_\_\_ and the particular needs of the group within which the attorney practices.

**Application Process.** If an attorney wishes to work on a reduced-time basis, a written request must be submitted to \_\_\_\_\_ specifying the reasons for the request, the billable hours per week the attorney anticipates being able to achieve, the office schedule the attorney expects to maintain, and the duration of the desired reduced-time status.

\_\_\_\_\_ will, when appropriate, review the request to determine whether the requested alternative work schedule would be feasible from a practice perspective.

**Compensation and Benefits.** If an associate's request is approved, salary and all fringe benefits tied to salary will be reduced proportionately based on the percentage of full time to be worked. Compensation and benefits for partners requesting an alternative work schedule arrangement shall be determined by the partners at the time they act on each partner's request.

**Effect on Advancement.** So long as the difference between full time and the time actually worked is \_\_\_\_ years or less (that is, four years at 75 percent equals a difference of one year), the attorney's progression toward advancement will not be affected. The effect of a reduced schedule in excess of this standard will be determined on a case-by-case basis.

**Evaluation.** Each alternative work schedule arrangement will be reviewed at least annually and may be reviewed at other reasonable intervals at the request of the attorney or \_\_\_\_\_. Consideration should be given to compensation or work schedule adjustments required by an economic analysis of the alternative work schedule arrangement for the period under review.

# Endnotes

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<sup>1</sup>Wis. Stat. § 103.10.

<sup>2</sup>29 U.S.C. §§ 2611-2612 (2003).

<sup>3</sup>42 U.S.C. § 2000e(k) (1978).

<sup>4</sup>*California Fed. Sav. & Loan Ass'n v. Guerra*, 179 U.S. 272 (1987).

<sup>5</sup>Wis. Stat. § 111.36.

<sup>6</sup>42 U.S.C. § 2000e-2 (1964).

<sup>7</sup>Wis. Stat. § 111.31 *et seq.*

<sup>8</sup>American College of Obstetricians and Gynecologists. Policy Statement on Pregnancy Disability (March 1974)

<sup>9</sup>29 U.S.C. § 1101 *et seq.*

<sup>10</sup>I.R.C. § 4980B.

<sup>11</sup>Barney Olmsted & Suzanne Smith, *Creating a Flexible Workplace* 11, Amacom (1989).

<sup>12</sup>Marci Alboher Nusbaum, *Making Flextime Work for You*, N.Y. Law. (Summer 2001) <<http://www.nylawyer.com/back/01/07/070111.html>>.

<sup>13</sup>Simcha Ronen, *Alternative Schedules: Selecting, Implementing and Evaluating* 162 (Dow Jones-Irwin 1984).

<sup>14</sup>*Id.* at 161.

<sup>15</sup>Survey by the State Bar of Wisconsin Special Committee on the Participation of Women in the Bar (1989) (on file with sponsor).

<sup>16</sup>Ronen, *supra* note 13, at 126.

<sup>17</sup>*Id.* at 129.

<sup>18</sup>*Id.* at 150. *See also* Olmsted & Smith, *supra* note 11, at 83.

<sup>19</sup>Joyce Gannon, *Business News*, Pittsburgh Post-Gazette, Dec. 7, 2003.

<sup>20</sup>Survey, *supra* note 15.

<sup>21</sup>ABA Commission on Women in the Profession, *Balanced Lives, Changing the Culture of Legal Practice* 35 (American Bar Association, 2001).

<sup>22</sup>Cynthia Fuchs Epstein et al., "Time Norms, Professional Lives, Family, and Gender," *The Part-Time Paradox* 23 (Taylor & Francis Books Ltd. 1999).

<sup>23</sup>ABA Commission on Women in the Profession, *supra* note 21, at 20.

<sup>24</sup>Epstein et al., *supra* note 22, at 90.

<sup>25</sup>ABA Commission on Women in the Profession, *supra* note 21, at 20.

<sup>26</sup>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, at 51 (2000).

<sup>27</sup>*Id.*

<sup>28</sup>ABA Commission on Women in the Profession, *supra* note 21, at 36.

<sup>29</sup>*Id.* at 35.

<sup>30</sup>*Id.*

<sup>31</sup>*Id.* at 40.

<sup>32</sup>*Id.*

<sup>33</sup>*Id.* at 21.

<sup>34</sup>*Id.*

<sup>35</sup>*Id.*

<sup>36</sup>*Id.* at 40

<sup>37</sup>*Id.* at 22.

<sup>38</sup>*Id.* at 24.

<sup>39</sup>*Id.*

<sup>40</sup>*Id.* at 40.

<sup>41</sup>*Id.* at 38.

<sup>42</sup>*Id.*

<sup>43</sup>*Id.* at 41.

<sup>44</sup>*Id.*

<sup>45</sup>*Id.* at 24.