

Flexibility in the Legal Workplace: Policies Versus Practice

By Jane DiRenzo Pigott¹

Most law firms have policies covering flexible and reduced work schedules. Most of these policies are in writing. Yet only a small percent of lawyers in law firms utilize these policies and an even smaller percent of male attorneys in law firm utilize them. This underutilization should induce law firms to investigate the implementation of these policies and address any issues created by the implementation which negatively impacts the viability of the options afforded by the policies.

Business Case

Law firms have adopted flexible and reduced schedule policies to retain and attract top talent. The younger generations in the legal workplace are less willing to sacrifice their personal lives and they choose to parent in a more involved way than Baby Boomers. Moreover, regardless of gender, there is a strong correlation between increased hours and attrition.

As the legal industry is recovering from the economic crisis, voluntary attrition is not the issue it was before 2008. As the market improves, however, generational disconnects existing in the legal workplace, especially with regard to competing priorities, will again drive up the attrition of attorneys that law firms, and their clients, wanted to keep. Viable flexible and reduced schedule policies have a positive impact on satisfaction, loyalty and retention of attorneys.

Policy Versus Practice

The National Association for Law Placement (NALP) collects a variety of data for law firms who interview at law schools. The most recent NALP research on lawyers working a reduced schedule in law firms was published on December 17, 2009 (<http://nalp.org/parttime>). NALP reported that 98% of law firms allow attorneys to work a reduced schedule, up from 86% fifteen years ago. Only 5.9% of the attorneys at these law firms utilize the policy. Almost three quarters of those utilizing a reduced schedule are female.

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Over the last fifteen years, the percent of attorneys utilizing a reduced schedule has increased, especially among partners in law firms.

	% of partners working a reduced schedule	% of associates working a reduced schedule	% of all attorneys working a reduced schedule
1994	1.2	4.0	2.4
2009	3.5	5.0	5.9

The acceptance of attorneys choosing to work a reduced schedule appears to have some geographic differences. NALP reported that three markets, Chicago, New York City and Washington, DC, accounted for one third of all attorneys who worked a reduced schedule in 2009. Among these three cities, however, partners who worked a reduced schedule were more than twice as common in Chicago and Washington as they were in New York City. The cities with the highest percent of associates working a reduced schedule were Richmond (9.8%), Portland (9.0%) and Indianapolis (8.5%). The cities with the highest percent of women associates working a reduced schedule were Richmond (20.7%), Indianapolis (17.4%) and Milwaukee (15.1%). Law firms in seven cities reported no male partners working a reduced schedule, and firms in eight cities reported no male associates working a reduced schedule.

Perceptions Driving Practice

Despite the fact that most law firms have policies, as the NALP research demonstrates, few attorneys (and even fewer male attorneys) utilize the policies. There are a number of perceptions that negatively impact the “practice” in law firms around the utilization of a flexible or reduced schedule option.

One common perception is that flexibility is not feasible given the 24x7 demands of clients. Feeding this perception is the fact that most law firms’ formal evaluation and compensation systems put a material value on the number of hours billed by an attorney. The counter argument to this perception is that most attorneys work for multiple clients and in connection with the matters they handle, attend meetings or travel so they are also only “available” to a client on a reduced basis. Moreover, working fewer hours does not mean that an attorney would not be available to meet a client’s needs.

A second perception is that law firms cannot afford to have attorneys working a reduced schedule because they are not profitable. The counter argument to this perception focuses on the bottom line and not just the allocation of overhead expense across the board and the amount of revenue. Attorneys working a reduced schedule may not be as profitable as an attorney billing 2500 hours, but they can be profitable.

A third perception is that certain practice areas are not amenable to an attorney practicing on a reduced schedule. This argument is really a red herring because there have been lawyers who have successfully utilized a reduced schedule in all practice areas.

A key component to success is the support of supervisors and colleagues, and this support can occur regardless of practice area.

A fourth perception is that working a reduced schedule detrimentally impacts the type of assignments the attorney will get and consequently negatively impacts the attorney's substantive development of skills. While it is true that the quality of assignments has a direct correlation to skill development, there is no reason why a person working a reduced schedule should not be given high quality assignments that allow for both substantive and professional development.

A fifth perception is that working a reduced schedule detrimentally impacts the attorney's prospects for promotion. Depending on when in his/her career an attorney decides to utilize the reduced schedule and the type of assignments he/she receives, it may take more time for an attorney working a reduced schedule to matriculate, but there is no reason why that attorney ultimately should not be able to attain the skills necessary for promotion. Many firms' policies specifically state that attorneys working a reduced schedule remain on partnership track. It is critically important that all attorneys, including those working a reduced schedule, understand the benchmarks necessary for promotion.

A sixth common perception about utilizing a reduced schedule is that the attorney will really be working a full-time schedule and be getting paid less because the number of hours necessary to succeed will be high. This perception feeds off two concepts: schedule creep and the difference between flexibility and predictability. No reduced schedule arrangement will be viable if the number of hours required is equivalent to working full-time, but the timeframe for looking at its viability has to be realistic enough to account for the short term time demands of time sensitive projects. On any given week, a reduced schedule attorney's hours may appear to be similar to an attorney working full-time, but those should be the exceptions and not the normal state of affairs. Careful monitoring of hours can ensure that over the course of a year, an attorney's reduced schedule is actually a reduced schedule. In addition, there is a difference between a reduced schedule (i.e., at a firm with a 2000 billable requirement, an 80% schedule equates to a 1600 billable hour expectation) and predictable schedule (i.e., not working on Fridays). A viable reduced schedule may not necessarily be predictable.

One final perception that impacts the implementation of flexible and reduced schedule policies is that the economic crisis has negatively impacted the viability of their use. On the one hand, when hours were scarce, the perception was that hours were first given to those attorneys who worked full-time and, therefore, were most profitable. Moreover, even if a reduced schedule attorney was getting enough hours to meet his/her billable hours expectation, having "lower" billable hours put that attorney "on the radar screen" as firms were looking at the utilization and profitability of their attorneys in connection with cutting expenses. One way some law firms cut expenses was to offer attorneys in practice areas facing reduced client demand, the opportunity to switch to a reduced schedule arrangement rather than face potential termination, thereby "rightsizing" their compensation to the number of billable hours currently available. The

ultimate impact of the economic crisis on the utilization of reduced schedule arrangements by lawyers in law firms remains to be seen.

In any law firm utilizing a flexible and reduced schedule policy, the leaders of the firm, its office leaders and its practice group leaders will need to understand the perceptions that may have a negative impact on utilization of the firm's policy. Effective training and communication should be utilized to address misperceptions and encourage viable implementation across all offices and practice areas.

Attributes of Viable Policies and Practices²

The language of most law firms' policies on flexibility and reduced schedules are similar, probably because many law firms utilize a version of the model policy initially developed by Joan C. Williams and Cynthia Thomas Calvert in Solving the Part-Time Puzzle: The Law Firm's Guide to Balanced Hours. Determining the language included in the policy is in large part the easiest step in creating a workplace where flexibility and utilizing a reduced schedule is viable. The most material impact on the viability of utilizing the policy is in its practical implementation: the practice of attorneys at the firm who utilize the policy and the attorneys who work with and evaluate those attorneys.

How do you know if the practices of your firm allow your policy to be viable? Here are three key measures:

1. Is the policy being utilized proportionately by both men and women? If it is not being utilized by both men and women, it is not fully viable and the firm should find out why men are not choosing to use the policy.
2. Is there a negative impact on the quality of the assignments received by an attorney if they utilize a reduced schedule? Compare both the quantity and quality of the hours that the attorney is getting before and after choosing a flexible schedule. If either has diminished, the attorney is unlikely to succeed on a reduced schedule.
3. Is there a negative impact on the ability of an attorney utilizing a reduced schedule to be promoted? A key indicator of viability is a steady pipeline of attorneys who are utilizing or have utilized a reduced schedule making their way to partner and leadership ranks.

Looking at these three metrics provides a quick but accurate view of the viability of the implementation of a flexible and reduced schedule policy. It is not enough for law firms to have policies in place; the leaders of these firms should be regularly assessing the viability utilizing these policies.

² The Project for Attorney Retention, <http://www.pardc.org>, has a variety of resources and research on utilizing flexible and reduced schedule policies in law firms and in-house legal departments.