

Better on Balance? The Corporate Counsel Work/ Life Report

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BETTER ON BALANCE? THE CORPORATE COUNSEL
WORK/LIFE REPORT

THE PROJECT FOR ATTORNEY RETENTION*
CORPORATE COUNSEL PROJECT
FINAL REPORT

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WorkLife Law
A Program of the American University Washington College
of Law

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EXECUTIVE SUMMARY

Work in corporate law departments has become increasingly popular and prestigious. Attorneys employed in law firms seek in-house positions because of the type of work, to be part of a strategic decision-making team, to have a proactive role in counseling clients, and, many say, to have a better quality of life. As reported in PAR's interim report issued last March, those who move to corporate law departments to have a better quality of life may be disappointed.

This study focuses on whether, and the extent to which, the quality of life in house is better than in law firms. It seeks to answer whether in-house attorneys can better balance their work and

personal lives, what work arrangements assist them in balancing, and whether attorneys who work part-time schedules are stigmatized for doing so. It also examines how companies benefit from having attorneys with balanced lives, and provides best practices recommendations for companies that want to implement effective alternative work programs for their attorneys. Finally, it addresses the common assumption of law firm managing partners that in-house counsel, as clients, do not want to work with law firm attorneys who work part time.

The major findings of this final report are:

1. Full time in house often means a fifty-hour workweek, although this is changing in some companies. Fifty hours is a long week — except compared to a law firm, where billable hours can stretch even longer, and business development is expected in addition. Many attorneys who went in house seeking greater work/life balance are satisfied to find exciting work on what they see as a reasonable schedule, especially if weekend work is rare. This is the reality behind the common perception that going in house is more family friendly (or life friendly): hours in house are long, but still allow time outside the office for a life.

Nonetheless, some corporate counsel do work law firm hours; one cannot assume that going in house will yield a more balanced schedule. Recent economic conditions, which have required law departments to do an increasing amount of work without a corresponding increase in resources, contribute to increasing work hours in some contexts, as does the influence of ingrained work patterns that attorneys from law firms bring with them. PAR heard from a number of in-house attorneys about law departments in which a nominal full-time schedule is forty-five to fifty hours per week, but where attorneys work far more hours. These additional hours may be spent in the office, or may be hours during which an attorney is “on call” or working from home.

2. Many attorneys can find balance on standard work schedules. In-house positions vary tremendously in their ability to offer work/life balance — much more so than law firms. Three models of law departments help to understand the variability. Some law departments are run like high-hours law firms. Attorneys in departments of this type are most likely to report that they are not satisfied with their ability to balance. Other law departments operate like a typical corporate division, with average hours and the ability to work at least somewhat flexibly. Attorneys in typical corporate environments generally report satisfaction with their ability to balance. They find they have some leeway in the times

that they begin and end their day, subject to the needs of their internal clients, and they can leave the office from time to time to take care of personal matters or work from home occasionally. The third type of department, the balance-supportive department, is discussed below.

3. A variety of alternative work arrangements can further help attorneys create balance. Part-time work does not play the same role in house as in law firms. In firms, the availability and quality of part-time programs is *the* crucial work/life issue — when one is working a sixty-hour week, finding a way to work fewer hours is the key to work/life balance. In-house attorneys can create balance in ways typically not available to lawyers in law firms, such as flextime, compressed workweeks and job sharing. While some typical corporate models of law departments may offer these options, they are most likely to be found in the third model, balance-supportive departments. Balance-supportive departments have deliberately implemented flexible work and alternative work arrangements as a business objective designed to improve retention and productivity.

4. Stigma plagues part-time work in house. In many law departments, part-time schedules are harder to come by, riskier, and more stigmatized than in law firms. PAR spoke with many in-house attorneys who said they would not consider working part time because they felt sure they would suffer in terms of status, assignments, promotion, and pay. PAR spoke with other attorneys who were expressly told they could not be considered for promotion if they were part time. Some attorneys expressed a fear of vulnerability if personnel reductions were made in the department, based on observations of other part-time attorneys who had been fired first. Still others had had their part-time schedules abruptly terminated, sometimes in a move by a new general counsel to eliminate all part-time schedules. Additional examples of part-time stigma included: getting 'dog' or routine work; receiving no bonus or only a small bonus that was disproportionate to the reduction in work hours; being evaluated more critically; and losing the respect of colleagues and supervisors.

5. Telecommuting is allowed in some legal departments, but the in-house environment presents some challenges to the potential telecommuter. A recent study by Catalyst found that nearly three out of four of the female and over half of the male in-house counsel surveyed wanted to telecommute, i.e. to work some hours or days from home. PAR did find some legal departments in which telecommuting is widely used. In general, though, formal

telecommuting arrangements (as opposed to occasional hours or days working at home) are uncommon, and lawyers reported two challenges that may make telecommuting difficult. First, some reported that, unlike law firms, their employers have a “culture of meetings” they feel they have to attend. Second, others feel that their effectiveness depends on whether their in-house clients consult them before making business decisions, and that to ensure this consultation, they have to be readily available in the office.

6. Law firms’ assumption that clients will not work with part-time lawyers is often inaccurate. During its initial law firm study, PAR repeatedly heard from law firm partners that they would like to offer part time “but the clients wouldn’t stand for it.” PAR tested this proposition in this study. Most in-house counsel stated they would not object to working with part-time outside counsel. Many expressed support for part-time work at law firms as an effective method to cut attrition at law firms, thereby preserving institutional knowledge and reducing the amount of time and money they must spend to educate new outside counsel. The key concern for in-house attorneys was that outside counsel be accessible when they were needed, and responsive to client concerns. Some in-house counsel noted that part-time attorneys could be more accessible and responsive than full-time attorneys who were often in trial, traveling, or were simply juggling a large number of clients.

In addition, this study examined work/life best practices used by a variety of companies for both their legal and non-legal employees. The best practices include:

1. Creating work/life programs that are individualized and fair. If alternative work arrangements are going to be effective retention and productivity tools, they need to allow the creation of individualized schedules that will address the balance needs of individual attorneys. Some may be able to balance by reducing or compressing their hours, but others may make use of several alternatives, such as compressing and telecommuting. Additionally, alternative arrangements need to be available to everyone who can make a business case for flexibility, not just mothers.

2. Effective implementation is the key to a successful program. Too often, companies stop their work/life initiative efforts once they have created their policies. Carrying the policies into effect is crucial. Some key implementation steps are leadership from the top, leadership from the middle, holding managers accountable for achieving the company’s work/life objectives, benchmarking, and providing resources to attorneys and their supervisors to use in planning and using alternative work arrangements.

INTRODUCTION

Better on Balance? seeks to answer five questions:

A significant number of male and female attorneys have left law firms to go to corporate law departments,¹ the Project for Attorney Retention learned during its 2001 study of part-time work in law firms.² Both males and females reported that a desire for "lifestyle changes" or "a better balance of work and family" motivated their decisions to move at least in part.³ What lifestyle did they find in house, and were they better able to balance their lives?

If it were ever true that in-house work guaranteed attorneys a comfortable nine to five schedule, it is certainly not true now.⁴ Many in-house attorneys work long hours under stressful conditions, and the average number of hours in-house attorneys work each week is rising.⁵ Now, more than ever, it is vital for general counsel and law department managers to examine work/life issues in their departments and implement effective programs that allow attorneys to balance their personal and professional lives. What benefits can corporations derive from effective work/life programs in their law departments?

Implementation of work/life programs has to be undertaken carefully, however. A troubling finding emerged from a 2001 Catalyst survey of the graduates of five elite law schools.⁶ Although two-thirds of the women lawyers had gone in house seeking work/life balance, fewer in-house than law-firm women felt they could advance professionally on flexible work arrangements. Additionally,

1. See NALP FOUNDATION FOR RESEARCH AND EDUCATION, BEYOND THE BIDDING WARS: A SURVEY OF ASSOCIATE ATTRITION, DEPARTURE DESTINATIONS & WORKPLACE INCENTIVES 31 (2000) (In 1999, 15.6 percent of associates leaving participating firms went in-house to work for a client or non-client, or for a professional services firm).

2. Joan Williams & Cynthia Thomas Calvert, *Balanced Hours: Effective Part-Time Policies for Washington Law Firms, Final Report of The Project for Attorney Retention, Third Edition*, 8 WM. & MARY J. WOMEN & LAW 357(2002) [hereinafter *Balanced Hours*].

3. See *id.*; Corporate Counsel's 2003 Quality of Life Survey, *They Didn't Do it for the Stock Options* (Dec. 2003), available at www.law.com/special/professionals/corp_counsel/2003/didn't_do_it.shtml (83 percent of respondents said a desire for a healthy balance between work and personal life was an important factor in deciding to work in house) [hereinafter *Corporate Counsel's 2003 Quality of Life Survey*]; CATALYST, WOMEN IN LAW: MAKING THE CASE 57 (2001) (61percent of in-house women and 47percent of in-house men cite work/life balance as a reason for choosing their current employer).

4. See *infra* Section II.A.2; Eriq Gardner, "Picking up the Pace," *Corporate Counsel's 2003 Quality of Life Survey* (Dec. 2003) available at <http://www.law.com/jsp/article.jsp?id=1067350996377> (in-house counsel report they are working long hours, and their hours increased over the past year).

5. See Gardner, *supra* note 4.

6. CATALYST, *supra* note 3, at 54-57.

attorneys who have used flexible work arrangements in corporate law departments reported to PAR in its 2001 study that they felt stigmatized as a result. Are these findings of stigma borne out by further study? Work/life programs remain one of the hottest topics in human resource management, despite the downturn in the economy. They provide a low-cost way for employers to attract and retain good talent, increase productivity, improve morale, and enhance corporate reputations. What work/life programs really work for lawyers, and how can corporate law departments best put them to use?

During and since the 2001 PAR law firm study, law firm partners expressed an understanding of the economic reasons for offering effective part-time programs but said they felt severely limited in their ability to accede to lawyers' desire for flexible work arrangements because corporate clients did not want to work with part-time law firm attorneys. Are in-house counsel, as clients, opposed to part-time work in law firms?

Better on Balance? is the product of more than two years of research and is, to our knowledge, the only full report ever written on work/life issues among in-house lawyers.

This is a qualitative study, using a snowball sample.⁷ The strength of using in-depth interviews is that it reveals wide variation in the responsiveness of legal departments to work/life concerns. Indeed, the most important take-away for individual lawyers is that attorneys seeking work/life balance should assume nothing and investigate thoroughly. If they choose the right company, they can find themselves in legal departments with balance-supportive policies, with high-quality work on a part time, thirty-hour a week schedule, in line for promotions along with the rest of the legal staff. In other, corporate model legal departments, lawyers find themselves with high-quality work on a steady forty-five to fifty-hour schedule. Yet, in a third group of legal departments run on the law firm model, in-house lawyers find they have taken substantial pay cuts and still are working a grueling 24/7 schedule. This is the pattern behind the Catalyst finding that sixty-five percent of the women surveyed listed "commitment to personal and family responsibilities" as a top barrier to women's advancement in house — only nine points lower than the percentage of law-firm women (seventy-four percent) expressing the same concern. If the

7. In a snowball sample, study participants are asked to provide the names of additional individuals who may also be interested in participating in the study. The 'snowball' grows larger as these new participants in turn identify others who may be willing to participate.

lawyers' goal was a forty-five to fifty-hour week, they are happy; if their goal was to work a part-time schedule, many are not.

This report reflects a review of the available literature on in-house counsel and information from hundreds of attorneys. Over the past two and a half years, approximately two hundred in-house attorneys and people who work with in-house counsel participated in PAR's research. PAR conducted formal in-depth interviews with in-house attorneys (including general counsel, law department managers, and staff attorneys at all levels), legal recruiters, and corporate human resource managers. PAR received survey responses, email messages, and personal comments from in-house attorneys, their internal clients, their outside counsel, and work/life professionals. In addition, PAR sponsored a focus group and several meetings of in-house attorneys, and participated in meetings of in-house attorneys sponsored by other organizations. PAR's work has included interviews with attorneys who are working, or have worked, standard hours schedules and reduced hours schedules; males and females; parents and non-parents; attorneys who have supervised both full-time and part-time attorneys; attorneys who have worked solely on-site and attorneys who have telecommuted occasionally or full time; attorneys who are employees of a corporation and attorneys who are independent contractors; attorneys seeking balance for child care and for other reasons; senior and junior attorneys; satisfied and dissatisfied attorneys; attorneys who have worked at law firms and attorneys who have not; and attorneys working in law departments of a variety of sizes ranging from one attorney to well over two hundred attorneys.

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I. THE BUSINESS CASE FOR BALANCE

The business case for flexibility begins from a simple fact: corporations aren't charities. They are in the business of delivering products or services, and are responsible to their shareholders for making a profit. That's precisely why they need to deliver for their attorneys and, in fact, all their workers, on work/life issues. Giving workers the flexibility they need to balance work and personal obligations improves the bottom line for corporations in four ways: it increases retention of experienced and valuable employees; it assists in recruiting and diversity efforts; it increases employee loyalty, productivity, and collegiality; and it enhances the corporation's image as a good corporate citizen and employer of choice.

A. Retention

If companies do not act to ensure their attorneys can have balanced lives, they might lose them — not just to other companies or non-legal jobs, but even to law firms. One recruiter reported that many law firms are doing better at work/life balance than corporations, and some are actively recruiting in-house attorneys for their substantive knowledge and their ability to work well with clients. Because of law firms' willingness to be flexible with schedules, there has been a definite increase in in-house attorneys returning to law firms. Said another, "Retention issues in-house will start to mirror some of the retention issues in law firms."⁸

Attrition is one of the chief effects of workplace inflexibility. When attorneys feel frustrated, exhausted, and hopeless as a result of constant time demands from their work, if they do not have an effective workplace program to help them adjust their schedules and workloads, they will feel compelled to leave their jobs. When they go, they leave a void in institutional knowledge about how things work, organizational memory for how things were done in the past, and relationships. It can take months for a company to get another attorney up to speed, at great expense and effort. A recent study of six hundred companies by the General Counsel Roundtable

8. Roundtable, *You've Hired the Best, Now Hang On to Them: Lessons In the Care and Feeding of Lawyers*, CORPORATE LEGAL TIMES (Feb. 2001), available at www.cltmag.com/editorial/roundtable/feb01.cfm [hereinafter *You've Hired the Best*].

“rigorously and quantitatively confirms that retaining in-house attorneys can do an enormous amount for reducing overall legal costs. . . . General counsel must have an aggressive retention strategy or they’re going to find that information capital is walking out the door.”⁹

The Roundtable found a strong correlation between attorney seniority and lower damage awards against a company. Scott Bohannon, Managing Director of the Roundtable, attributes the correlation to senior attorneys’ company-specific knowledge of matters such as company policies, and record-keeping practices, and to experienced employees’ strength as witnesses.¹⁰ One general counsel who reviewed the study concluded that “retaining our in-house attorneys could produce enormous cost savings and was one of the most valuable management functions I could perform.”¹¹

Strong evidence of the financial impact of flexible work arrangements comes from many quarters:

- Standard human resource estimates are that it costs between 75 percent and 150 percent of a worker’s annual salary to replace someone when they leave, with the cost of replacing professionals at the high end of that range.¹²
- According to the Watson Wyatt Human Capital index, a company that makes a significant advance in recruiting and retention produces an eight percent increase in shareholder value.¹³ The same index reports that a company with a significant increase in creating a collegial, flexible workplace can add 9percent to shareholder value.
- “Literature indicates that enabling employees to telecommute two days a week can result in 15 to 25 percent increase in productivity, as well as a decrease in turnover, a reduction in space requirements, and a decrease in sick-time usage by two days, resulting in a total savings per employee of an estimated \$12,000 annually.”¹⁴
- Based on its 1998 study of over one thousand companies, the Families and Work Institute concluded that “[o]nly 18% of the

9. Scott Bohannon, *Keeping In-House Counsel Happy Pays Off For GCs*, CORPORATE LEGAL TIMES, Oct. 2002, at 27.

10. *Id.* at 26.

11. *Id.* (quoting Stuart J. Nichols of KLA-Tencor Corp.)

12. JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 88 (2000).

13. WATSON WYATT WORLDWIDE, HUMAN CAPITAL INDEX®: HUMAN CAPITAL AS A LEAD INDICATOR OF SHAREHOLDER VALUE, 2001/2002 SURVEY REPORT 6-7 (2002).

14. CORPORATE EXECUTIVE BOARD/CORPORATE LEADERSHIP COUNCIL, KEY FINDINGS: FLEXIBLE STAFFING PRACTICES (May 2003) (on file with author) [hereinafter FLEXIBLE STAFFING PRACTICES].

companies offering one or more flexible work arrangements perceive the costs of their investments in these policies as outweighing the benefits, while 36% perceive these programs as cost neutral and 46% perceive a positive return on their investments.”¹⁵

- The Society for Human Resources (SHRM) profiles several companies that have found that improved work/life policies brought them improved employee and customer retention, including Aetna Life & Casualty Co, which “halved the rate of resignations among new mothers by extending its unpaid parental leave to six months, saving it \$1 million a year in hiring and training expenses.”¹⁶
- Ernst & Young estimates, based on widely accepted estimates of replacement costs of 1.5 times base salary, that the company’s workplace flexibility programs and other initiatives aimed at women’s development and advancement have saved it an average of \$12 million annually in the past seven years.¹⁷
- Deloitte has documented that its improved workplace flexibility programs saved it \$27 million in 2003 alone.¹⁸

Any company can calculate the costs associated with attrition to see for itself how retaining even a few of the ‘regretted losses’ suffered when good employees leave can increase the bottom line. The attrition costs are both direct and indirect, and have two sides: those incurred when an attorney leaves; and those incurred when another attorney is hired as a replacement.

Attrition is not always bad. If an employee is not performing well, then obviously attrition saves everyone the difficulties associated with having that particular individual move on. But encouraging high overall attrition is not a desirable way to achieve this goal, because it will not weed out only underperformers; it will weed out everyone who, regardless of their talent and promise, cannot work a certain schedule.

15. FAMILIES AND WORK INSTITUTE, *Executive Summary of 1998 BUSINESS WORK-LIFE STUDY (BWLS)*, available at <http://familiesandwork.org/summary/worklife.pdf> (investigating how U.S. employers are responding to work-life needs).

16. SOCIETY FOR HUMAN RESOURCE MANAGEMENT, *INTEGRATING WORK/LIFE PROGRAMS: SHRM WORK/LIFE BALANCE TOOLKIT* (2003), available at www.shrm.org.

17. Email from Deborah K. Holmes, Director of the Center for the New Workforce, Ernst & Young, Nov. 10, 2003 (on file with authors); Email from Deborah K. Holmes, Director of the Center for the New Workforce, Ernst & Young, Oct. 28, 2003 (on file with authors) [hereinafter E-mail from Deborah K. Holmes, Oct. 28, 2003].

18. Email from Kathryn Davie Wood, Senior Manager, Initiative for the Advancement of Women/Flexibility & Choice, Deloitte & Touche (Oct. 28, 2003) (on file with authors) [hereinafter E-mail from Kathryn Davie Wood].

Costs incurred when an attorney leaves:

- Lost institutional knowledge, including the company's way of doing business;
- Lost relationships with internal clients and colleagues;
- Lost productivity as the departing attorney looks for a new position;
- Lost productivity while the position is unfilled;
- Administrative costs associated with a departing employee;
- Loss of collegiality;
- Bad effect on morale.

One professional who was leaving a major employer confided that she had only two weeks left. "My mind just isn't there anymore. I feel like saying to them, you know, you really don't want me doing this anymore."

PAR interviewed many general counsel, department managers, and human resource professionals about costs associated with attrition. Their very thoughtful responses underscore that these costs of attrition are very real:

Retention is a good thing, because your attorneys know the business and the individual clients. The costs of poor retention include recruiting costs, hiring costs, and the costs of getting someone up the learning curve. Also, I want a collegial department. People here work hard, but they enjoy their work and their co-workers, and feel supported by the company.

— A male general counsel

A lawyer managing several other attorneys explained that a new father of twins took four weeks off and then informally had reduced hours and reduced assignments for three or four months. "He gets the job done. Institutional knowledge is important — if I replaced the dad, I would lose his institutional knowledge and client relationships. As an in-house lawyer, that's the kind of issue I think about. In my experience, firms don't give those considerations nearly the same weight."

Costs associated with a new hire:

- Recruiting, headhunter, and/or moving expenses;
- Interview time spent by other in-house attorneys and clients;
- Time and money spent training the new attorney;
- Lost productivity associated with building relationships with internal clients and co-workers;
- Lost productivity associated with inefficiency due to inexperience or unfamiliarity with the company;

- Administrative costs associated with hiring and orienting a new employee.

In-house attorneys interviewed by PAR indicate that the costs of bringing a new person up to speed are keenly felt:

- One recruiter said that the time a company devotes to hiring varies a lot. Some corporations will have only their attorneys interview a few candidates, and spend a total of twenty hours interviewing for an assistant or associate general counsel position. Other companies will have many rounds of interviews, bringing in fifteen to twenty candidates for the first round, five for the second, and a few for a third and even fourth round. Candidates can expect to meet with the business clients during one or two round of such interviews.
- One attorney described working for a general counsel who was willing to do whatever was "necessary to make it work for people. He was a great guy." She explained that the incentive for corporations to follow this approach is "wanting to keep good people. Yes, for every one of us here, there's probably fifty people who want to beat down the doors, but are they going to fit in? How long is it going to take for them to learn the work? There is a real learning curve."

Work/Life Policies Can Benefit Corporations By Decreasing Attrition. In the face of these significant costs, corporate counsel offices, like other employers, will often conclude that it is worth their while to give attorneys the flexibility they need to balance work and other responsibilities. The following experiences illustrate that such policies do make a difference specifically for in-house counsel offices and similar professional settings:

My thinking is that five years of part-time work out of twenty-five to thirty years working for my corporation will have a marginal impact on the company, and that it is more important to retain her experience and institutional knowledge.

— A male general counsel of a large law department

We have job sharing, people who do or have worked part time and people who work partly at home. We've had incredible attorney retention. In the past five years, only two attorneys have left the General Counsel's office: one retired and one moved to the business side of our company."

— A male general counsel of a law department with more than a dozen attorneys

Of the twenty-eight people interviewed at Sheila Davidson's New York Life corporate counsel office, which has tried hard to become family friendly, only one person expressed a desire to work elsewhere.¹⁹

B. Recruitment and Diversity

Effective policies for work/life balance can help companies recruit new attorneys and increase the diversity of their legal departments. This is true for men as well as women — and for people of color as well. Attorneys want to work for companies with good work/life programs, because even if they have no present plans to work an alternative schedule themselves, the existence of the programs is evidence that the companies have a people-first attitude. Given the large number of attorneys who say lifestyle is important to them in choosing an employer,²⁰ companies cannot overplay the work/life card when recruiting. Moreover, because work/life programs increase the number of people who can potentially work for an employer and then improve retention chances, they assist companies in achieving greater diversity in their workforces at all levels.

Successful companies are well aware of these advantages. “It’s helpful in recruiting, particularly women,” said Sara Moss, who was with Pitney Bowes at the time and is now with Estee Lauder Companies.²¹ Others concur:

I only changed companies when I knew that my part-time schedule would be protected at the new job. I left the first job when it became clear that part time would not be protected. I went to the company where the GC who had hired me at my former job had gone; I knew he would protect my part-time status.

— An attorney who has worked part-time in-house for over a dozen years

There are black partners around. So there are no barriers that are solid ceilings that you cannot bust through. But you do have

19. Catherine Aman, *Finding That Sweet Spot*, CORPORATE COUNSEL (Nov. 19, 2002), available at www.law.com/servlet/ContentServer?pagename=OpenMarket/Xcelerate/View&c=LawArticle&cid=1036630438783&live=true&cst=1&pc=0&pa=0.

20. Corporate Counsel’s 2003 Quality of Life Survey, *supra* note 3 (83 percent of respondents said a desire for a healthy balance between work and personal life was an important factor in deciding to work in house).

21. *You’ve Hired the Best*, *supra* note 8.

to be the superstar to do that, and put in a Herculean effort, and I can say that almost all of the people who have broken through, with very, very few exceptions, have done so without having kids until after they make partner. [I would not stay at a law firm.] What it would mean is more of the same six days a week, very late nights, no time with the kids or the spouse, so I really wasn't interested.

— A male minority corporate attorney at a large multinational corporation

It's in my business interest to do this. I can get better people by being flexible. I can't pay law firm wages but in the last 18 months I have hired three people from law firms. They were leaving the rat race. Two were hired full time for the sanity and rationality here. Young lawyers want a proper balance between career, kids, parents, vacation, and cultural enrichment. We give it to them, and consequently have a much lower turnover rate than any law firm. This makes economic sense, because the most expensive thing we do is to recruit and train lawyers — it takes a period of months to get a new lawyer up to speed.

— John J. Flood, Vice President and Associate General Counsel, NASD

*The number of women partners at Deloitte increased from 6.5 percent in 1993 to 17 percent in 2003.*²²

C. *Loyalty, Productivity and Collegiality*

If you accommodate people, you end up with incredibly efficient, productive and motivated lawyers.

— John B. Reid-Dodick, Reuters America Inc.²³

PAR repeatedly heard that strong work/life balance policies that truly were respected created loyalty among attorneys, increased productivity, and improved the collegiality of the office. These positive results overlap and reinforce one another, as demonstrated by the comments below.

A lawyer in a job-share arrangement said that related how her happiness with her schedule made her willing to go the extra mile for her employer. A work/life professional in an organization with an

22. See E-mail from Kathryn Davie Wood, *supra* note 18.

23. See *id.*

active alternative work program noted: "People who go on alternative work schedules are so thrilled they work hard to make it work."

A corporate attorney who had "tried all different kinds of things" to get work/life balance and professional satisfaction currently works for a corporation twenty or twenty-five hours per week on a contract basis — from home. The lawyer she reports to "jokes that I'm his most productive attorney. I'm constantly being told that my clients are happy." She says, "I will do anything that they ask of me in order to keep this job. The ability to work from home breeds a certain amount of loyalty, and that is what flexible employers would benefit from. Because if you give somebody the chance to do what I do, and because what I do is so hard to find, you will be able to keep them." She is living proof: "I get calls and I get job offers, and I don't even look at them."

"I have been promoted twice. Now I'm a senior director. That's the most senior level below being an officer. I don't think being part time has impaired my advancement. Part time is a great retention program. I get calls about really good jobs twice a year or so from headhunters, and if I wanted to work all the time, I'd leave. But I couldn't replicate the deal I have now so I don't even look."

— A female in-house attorney

Another part-time attorney emphasized that her reduced schedule forced her to be more productive:

When I was working three days a week, I just knew what I needed to produce. I was just as efficient as all get out. You know, you couldn't have asked for a more efficient employee. I didn't chat in the hallway. I didn't go to lunch very much. I would limit myself to like once every two weeks. Just in order to get my work out and get home.

— A female attorney

In addition to triggering the need to be productive and the desire to give back to a supportive employer, attorneys told PAR researchers that working an alternative schedule allows them to take care of personal business on their own time. Moreover, they rarely have time to do anything except work at the office. More than several wryly pointed out that their full-time colleagues in fact spend a considerable amount of time in the office on non-work

matters such as shopping, exercising, arranging childcare and setting up parties.²⁴ Some illustrative comments:

“We have a VP who used our enhanced eldercare service and said it saved him at least 40 hours of time. If you calculate the equivalent of his hourly pay and multiply it by the 40 hours he saved using the program, Baxter virtually paid for the yearly cost of the program.”

— Director, Community Relations /Work & Life, Baxter International

Everyone knows that if people aren't given the option of working from home when they need to be there for personal reasons, they'll end up doing that stuff from work anyway.

— A female attorney on a standard schedule

In a job share, you can't screw off because your job share partner always knows what you are doing. This is quite a bit different from full-time people, who have a lot of downtime.

— A female job-sharing attorney

It seems inequitable. I am expected to take care of personal things on my days off, while the full-time attorneys are doing it on company time.

— A part-time attorney

When a corporation implements its work/life policies effectively and creatively, not only are the individual attorneys using the policies more productive, but their colleagues are, too. In the corporate counsel office of New York Life, some attorneys have occasionally requested temporary part-time work. Instead of treating such a request as a problem, General Counsel Sheila Davidson realized that it created an opportunity to cross-train more junior attorneys, who were called upon to pick up the work which otherwise would have been done by the now-part-time attorney. Those attorneys became more marketable and more useful to the company — they easily could be promoted if the part-timer left or advanced.²⁵

24. Sue Shellenbarger, *What You Can Get Away With*, WALL ST. J. (May 2002); Sue Shellenbarger, *What You Need to Know about 'Undertime Rules'* (Apr. 2002), available at <http://www.careerjournal.com/columnists/workfamily/20020419-workfamily.html>;

25. Interview with Sheila Davidson (Jun. 2003).

D. Corporate Image as an Employer of Choice

Many businesses make a sustained and costly effort to try to appear on the various lists: *Working Mother's* The 100 Best Companies for Working Mothers, *Fortune's* 100 Best Companies to Work For, the Minority Corporate Counsel Association's Employers of Choice Award, and other organizations' 'best company' lists. PAR heard of one company that hired an employee who was paid hundreds of thousands of dollars, whose sole responsibility was to get the company on the various lists.

Why? Good publicity is good for the bottom line. For example, the fact that Deloitte has made *Fortune's* list of best places to work every year for the past four years has been reprinted in the media,²⁶ Deloitte is the only Big Four accounting firm that has made *Fortune's* list of best places to work every year for the past six years,²⁷ and Ernst & Young touts the fact that it repeatedly has been on both the *Fortune* and *Working Mother* lists.²⁸ Winners find that "candidates love to hear about the recognition . . . and . . . it's also a great morale booster for existing employees."²⁹ Recognition as an employer of choice also enhances the company's image as a community leader — something many corporations pay many millions of dollars trying to accomplish.

What works for the corporation's external image also may also work inside the corporation. One unexpected finding was that some managers have gone out of their way to establish a reputation for creating an outstanding workplace environment, because it helps them stand out as 'someone to watch.' Fresh ideas and successful work/life efforts can help individuals, as well as corporations, develop a reputation for being creative and successful leaders who 'think outside the box' and are 'far ahead of the pack.'

"I think it's ironic that [my employer] puts so much importance on being on one of the 'Top 100 companies to work for' lists. [My employer] thinks it's so wonderful because it allows ME to have an alternative work arrangement, but it really isn't supported."

26. See, e.g., Katie Merx, *Deloitte Gets First Woman Chief: Buckles Picked; Bava to Take National Position*, CRAIN'S DETROIT BUS., Apr. 23, 2003.

27. See Email from Kathryn Davie Wood, *supra* note 18.

28. ERNST & YOUNG, GETTING TO EQUITY: CREATING A LEVEL PLAYING FIELD FOR WOMEN AT ERNST & YOUNG (Oct. 2003).

29. Michelle Neely Martinez, *Work & Family: An Inside Look at Making the Grade*, HR MAG (Mar. 1998), available at <http://shrm.org/hrmagazine/articles/0398fam.asp>. (quoting Tony Harris, director of diversity and employee relations for BNA) Used with permission of HR Magazine, published by the Society for Human Resource Management, Alexandria, Va. All rights reserved.

— *A female job-sharing attorney*

"When our company was named as one of the best for working mothers, a bunch of us cancelled our subscriptions in protest."

— *A female in-house attorney*

Lip service is bad for business. An important point is that a company will not make these lists unless it 'walks the walk' as well as 'talks the talk.' This is reflected by traditional measures such as those used by *Working Mother* magazine in deciding which employers to include on its "Best Companies for Working Mothers" list. "Family friendly involves much more than, 'Oh, we have this great policy.' . . . If people are afraid to use the policy or suffer consequences for doing so, then the company efforts are not ideal."³⁰ PAR found substantial evidence of a gap between policy and practice. For example, many in-house attorneys reported that their companies allowed telecommuting and part-time work, but the attorneys were prevented or discouraged from telecommuting or reducing their hours. Of course, if people do not feel free to use the workplace flexibility that is available on the books, the benefits articulated above will not be reaped.

"Our CEO focused on the importance of valuing, respecting, and developing people. The corporation's values are aspirational but also represent a sincere effort to get people to establish the expectation that supervisors should encourage expression. If anyone makes inappropriate comments, something will be done. They will be offered coaching or more. It's not just lip service."

— *Senior counsel in a large law department*

In fact, having work/life policies on the books that people do not feel free to use may be bad for business, according to an important finding in a survey by Baxter International, which has been named on many 'top employer' lists. Baxter found that when employees felt that the company was only paying 'lip service' to work/life issues, the fact that a company is offering these programs can actually make employees mad.³¹ Baxter found that what was important was to 'walk the walk,' and that the key was to treat employees as whole people, with work lives that are a component of their larger lives.

The important message from Baxter's experience is that a company may actually decrease morale if it has work/life programs

30. *Id.* (quoting Deborah Wilburn, Deputy Editor of *Working Mother Magazine*).

31. Interview with the Director, Community Relations/Work & Life, Baxter International (Jun. 2003).

on the books that employees do not feel free to use. Having good work/life programs on paper may be counterproductive unless employees feel that the formal programs available are an integral part of a company culture, and the company is committed to respect the fact that employees have other aspects of their lives that they are trying to balance along with their commitments to their employers.

*Baxter International offers employee assistance programs, resource and referral services for child and elder care, backup emergency child and elder care at major locations in the U.S., lactation programs, some fitness centers, lots of health and wellness programs, discounts and priority access to national childcare center chains, adoption assistance, seminars and informational tip sheets, and flexible work arrangements that include part time, job sharing, compressed work week, telecommuting, and flextime that is so common that they no longer consider it a flexible work arrangement—just business as usual.*³²

II. FINDINGS: IS THERE BALANCE IN LAW DEPARTMENTS?

A. *Worklife And Work/Life In House*

Why do attorneys choose to work in corporate law departments? What do they find when they get there? This section will answer these questions, and discuss three typical models of law departments.

1. *Reasons for Going In House*

One of the most common reasons attorneys give for moving from law firms to law departments is the ability to work closely and proactively with one client. In law firms, attorneys typically work for several clients at the same time, and often are called upon only after problems have arisen. Crises, short deadlines, and discrete assignments prevent the attorneys from immersing themselves in clients' businesses.

Most attorneys interviewed by PAR report that their client-related expectations have been met as a result of going in house. They have found that working with one client gives them the

32. *Id.*

opportunity to learn the client's business thoroughly. They are able to prevent problems, participate in strategic planning, and be integrated into the business operations of the client, which they find particularly rewarding. They are also able to use their business and management skills, and several described the blend of business and law to be very appealing.

Lifestyle considerations also are a very common reason attorneys go in house. Attorneys in law firms work long workweeks, often sixty or more hours.³³ They have little control over their workloads, many travel frequently, and almost all spend additional hours cultivating client relationships and looking for new business. PAR and other researchers have heard many complaints from law firm attorneys about stress, burnout, and lack of time to have a personal or family life.³⁴ One attorney explained how lifestyle issues played a significant role in his move in house: "When I was a litigation associate at a law firm, my middle daughter thought I lived at the office, and used to ask my wife if daddy was going to visit us this weekend. That was not good. My oldest daughter, one of her first words was 'apples' that's because daddy was in Minneapolis ('mini-apple-us'). Because I had a big case, and I was there, literally almost every day for a year."

Have the attorneys' expectations of a better quality of life been met as a result of moving in house? Although many attorneys who move in house expecting the old stereotype of a reliable 9 to 5 schedule do not find it, many find the quality of life in house to be superior to that in law firms. A significant portion, however, have been sorely disappointed. While the individual characteristics of the attorneys play an obvious role in satisfaction with lifestyle, as set forth in the remainder of this section, the environment or culture of the law departments they join also plays a crucial role.

"I understand the business a lot better than I would as an outside lawyer. I know the ins and outs of everything that is going on, be it the substance of the transactions or the politics of who has to

33. See *Balanced Hours*, *supra* note 2, at 380.

34. *Id.* at 360; see also CATALYST, *supra* note 3, at 40 (over 70 percent of men and women, partners and associates, report difficulty juggling work and personal life); COMMISSION ON WOMEN IN THE PROFESSION, ABA BALANCED LIVES: CHANGING THE CULTURE OF LEGAL PRACTICE (1990), available at www.abanet.org/women/balancedlives.pdf; 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* (2000), available at <http://womenlaw.stanford.edu/mass.rpt.html>; Ellen Ostrow, *Beyond the Billable Hour: The Pain and Promise of Part-Time Work in Law Firms*, (Oct. 5, 2000), at www.lawyerslifecoach.com.

approve it (and what their personal pet peeves are), so I can be a lot more effective."

— An associate general counsel in a large law department

2. Characteristics of In-House Work that Affect Work / Life Balance

Work Schedules

Twenty years ago, in-house attorneys often were stereotyped as having routine work and easy, regular hours. Clearly, that has changed. Many corporations have determined that they can save money and get better advice by having their in-house attorneys, who know their business intimately, do almost all of their legal work.³⁵ Many in-house counsel report they now keep the most exciting, strategically important work for themselves, and farm out the routine or overflow work to their outside counsel. Companies have been able to recruit attorneys with stronger backgrounds by offering them dynamic work, stock options to supplement lower salaries, and the opportunity to work closely with internal clients in a cooperative atmosphere unaffected by billable hour pressures.³⁶

Access to challenging, cutting edge work has come with a price. Far from the old stereotype, many in-house attorneys find that they work at least as hard as they did at major law firms, and that they are expected to be available to their internal clients at all times.³⁷ As a man who was one of only a handful of attorneys working for a large corporation put it:

35. See, e.g., Catherine R. Nathan, *Get the Best and Brightest to Work for You*, CORPORATE LEGAL TIMES (Jan. 2001), available at www.cltmag.com/editorial/roundtable/jan01.cfm (discussing improvement in quality of work kept in-house and increased prestige of in-house attorneys).

36. Although in-house counsel must develop relationships with their internal clients, they generally do not have rainmaking and billable hour responsibilities. The attorneys with whom PAR spoke expressed joy in being freed from "billable hour pressure," "the eternal search for clients," and "the rat race."

37. In a Roundtable reported in *Corporate Legal Times*, several in-house attorneys discussed the improved image of in-house attorneys and the corresponding change in quality of life. See *You've Hired the Best*, *supra* note 8. Ann MacDougall of PricewaterhouseCoopers explained, "[w]ith the uptick in quality work and prestige, there is an uptick in the quantity of work. I know that I'm working — and my colleagues are working — many, many more hours than when I started 10 years ago." *Id.* John S. Redpath, Jr., of Home Box Office (HBO) agreed, stating "[t]here is an upside and a downside to having brought the interesting work in-house That quality-of-life gap is getting narrower. . . ." *Id.*

When I went in house, one of the folks that I was working with at the firm said, "Oh, that's great. Now you can work bankers' hours." He's right; I do work bankers' hours. Unfortunately, it's the automated teller machine. So I'm down ten minutes a day, between 2:00 and 2:10, when they refill me.

Other frequently-mentioned reasons included not billing hours or soliciting business, focusing more on outcomes, working closely with the business people, keeping the sophisticated work, and being appreciated by internal clients. While these aspects of job satisfaction are not directly related to the number of hours worked, many attorneys asserted that satisfaction with the substance of their work was an important element of their work/life balance.

The hours in house vary greatly from corporation to corporation. A few full-time attorneys interviewed by PAR work less than forty hours per week. A handful work more than sixty hours per week on a regular basis. However, the vast majority of attorneys reported that full-time attorneys at their corporations are generally in their offices between forty-five and fifty hours most weeks. This is consistent with individual stories reported in the media,³⁸ as well as quality of life surveys reported in *Corporate Counsel* magazine.³⁹ These reports may underestimate hours somewhat, as many in-house attorneys also work at home and some are on call after hours.

A sampling of the descriptions of work schedules given by interviewees shows the variety of 'typical' work hours found in house:

- After more than fifteen years in-house at the same corporation, one full-time attorney said she has never canceled a vacation. She typically works around forty-five hours per week (which is

38. See, e.g., Janet L. Conley, *In-House Counsel: The Myths, Money and 9-to-5 It Ain't*, 110 FULTON COUNTY DAILY REPORT (Nov. 8, 1999) (warning that in-house work "might require long, irregular hours, weekend work and the occasional midnight call," and describing one attorney who works a "manageable 50 hours a week" and another who averages ten hours per day); Claudia MacLachlan & Siobhan Roth, *In-House Hunting: A Tour Through Notable Corporate Legal Departments*, LEGAL TIMES (May 26, 2000), available at www.law.com/jsp/statearchive.jsp?type=Article&oldid=ZZZKOSW6Q8C (describing a Freddie Mac attorney who generally works forty-five to fifty hours per week and the General Counsel of Discovery Communications as reporting that their attorneys generally work nine to ten hours per day).

39. In both the 2001 and 2002 surveys, over seventy percent of the hundreds of in-house attorneys who responded reported working fifty-five or fewer hours per week. See *The Right Balance*, CORPORATE COUNSEL (2001), available at www.law.com/special/professionals/right_balance.html; *There's No Place Like Home*, CORPORATE COUNSEL MAG. (2002), available at www.law.com/special/professionals/corp_counsel/2002/overview_2002.shtml.

more than her company's official forty hours per week), in general does not work weekends, and does multi-million dollar deals with tight deadlines.

- One attorney said that she works nine or ten hour days and does not take lunch. In addition, she often takes reading home for the evening and works one or weekend days per month. She explains that, while attorneys at her company can let it be known they are not available for long hours, that attitude will hurt their bonus and their perception as a strong employee.
- A managing attorney described arriving at his office at 8:30, working until somewhere between 5 and 7 p.m., and then working another hour or two at home after having dinner with his family. In addition, he regularly works three to four hours most Sunday evenings.
- A full-time attorney who was about to become General Counsel at her small company commented that "Working at an institution whose non-legal workforce has a shorter than average workweek, when the attorneys work 40- or 45-hour workweeks, it looks like we're here all the time."
- One senior corporate counsel for a Fortune 100 company said, "Here workweeks are 50 – 60 hours a week at a minimum. One female job applicant gave 'better hours' as her primary reason for wanting to work [here]. That kind of statement is a red flag that the person is not going to succeed in this legal department."

Working on weekends or canceling a vacation due to work demands is much less common in companies than in law firms. One attorney explained that when she went in house over a decade ago, she accepted a significant pay cut, but she "had a life again." In her full time in house position, she worked nine or ten hours per day with no weekend work. A female attorney doing regulatory and contract work in a ten-attorney department exclaimed, "I have not worked one weekend since I started over a year ago. The first weekend I was here, I didn't work the weekend, and I honestly felt like I had a vacation because I didn't work that weekend." She added that nobody there works weekends: "it's just a completely different environment." These anecdotal reports confirm the findings of the American Corporate Counsel Association (now Association of Corporate Counsel),⁴⁰ that having more weekends and evenings free is one of the reasons many in-house counsel are satisfied with their positions, even though they could earn more at a firm.

40. Susan Hackett, *ACCA's Revealing Trends*, LEGAL TIMES (Jul. 17, 2002).

Flexibility

As professionals, many lawyers expect the freedom to go to the gym before work or at lunch, adjust their hours to avoid the worst of rush hour or to conform to day care schedules, or meet the plumber at home, without going through bureaucratic hoops. PAR found such flexibility in many law departments, but at some companies, such flexibility is unthinkable. Supervisors want to know where their attorneys are at all times. They may require attorneys to sign in and out, including giving a description of where they are going and when they will return.

Where flexibility exists, in-house attorneys report having the flexibility to set their own beginning and ending times, and/or to leave during the day if needed. Many also have the flexibility to work from home on occasion.

Face Time

Similar to stories told by some law firm lawyers, several in-house attorneys recounted their tricks for sneaking out 'early' at 5:00 or 5:30. One attorney, who never brings her coat or purse into her office, said she leaves her office light on in the evening and pretends to go to the ladies room while actually running down the back staircase to her car. Another makes a point of sending emails while signed on to her company's network as soon as she gets home. These attorneys are in law departments with 'face time cultures,' in which attorneys work all their hours in their office and do not start later or end earlier than the norm, regardless of how much work they complete or how many hours they work.

In fact, it appears from anecdotal evidence that a higher percentage of law departments than law firms may have face time cultures. Three possible reasons for this have emerged. First, some law departments have rigid hours because of tradition. For example, one attorney related that her department is run by a male attorney who is old fashioned, likes face time, and has mostly men working for him. He often schedules meetings on weekends. Second, most law departments do not have objective measures to evaluate attorney productivity, unlike law firms that have billable hour requirements. Requiring attorneys to work in their offices during set hours becomes a substitute for ensuring that work is being performed.

Third, and most importantly, the nature of in-house work demands on-site presence in many companies. In-house attorneys

are expected to be available for face-to-face meetings with their internal clients. Attorneys need to be present simply to be seen, to be present so that clients will seek legal advice. Having clients able to consult you easily and without worrying about the billable hour clock ticking is one of the joys of being in house, and being proactive and involved in decision-making (rather than primarily solving problems that could have been avoided) is another. Many are convinced that if their clients cannot walk down the hall and chat with them, they will act anyway, without receiving legal advice. Clearly, for attorneys in these types of companies, being present during office hours is not the equivalent of law firm associates reading the newspaper in their offices on Saturday simply to be seen in the office on the weekend. Instead, they understand it as a legitimate need of the company, as this in-house attorney noted: "There is a genuine need for face time here. We have three lawyers in the office. People walk down the hall and ask questions and invite us to meetings. We need to be here for this. If we're not here, they might not ask."

Face-time culture penalizes the attorneys who are efficient, complained one experienced attorney at a corporation with a strong reputation for progressive work/life policies. She found that she spent too much time simply being seen in meetings, or waiting for somebody to update her, so that others would see her as 'in' on a particular project. If an attorney is not in the office between 8:30 and 6:00, she reported, somebody better be able to find him or her. While her office officially allows telecommuting, in reality her employer frowns on such requests.

On call

The flexibility described above clearly goes both ways: Just as corporations recognize that attorneys' personal needs sometimes must be met during work hours, they expect attorneys to recognize that the corporation's business needs must sometimes be met outside standard working hours. Most attorneys check their voicemail and email on their days off, whether those days are weekends, vacation, days spent at home with a sick child, or days off due to alternative work arrangements. For attorneys who are General Counsel or have other senior roles, and for attorneys whose clients are less respectful of their free time, this responsibility can create the feeling that they are always 'on call' or are expected to be available 24/7:

My employer's written policies explicitly state that the higher the attorney's grade, the longer her hours and the more on call she is. I have been in house over five years. I am expected to check my email on weekends so I can give my client a quick response, and to have my cell phone on at all times.

— A female in-house counsel

Now that I am a General Counsel, my clients look at me as working 24 hours a day. If I take off, I'll get thirty calls at home in a day.

— General counsel of a medium-sized law department

Size

Law departments tend to be far smaller than law firms. It is not unusual for a large corporation with five thousand employees to have a law department of only three or four attorneys. A law department with only thirty-eight attorneys would be considered among the largest in the country,⁴¹ whereas a law firm with that number of attorneys would be considered barely medium-sized. Size plays a key role in whether attorneys are able to find balance; while a very small department may be able to be more flexible in terms of scheduling, it will be less able to shift workloads to accommodate attorneys' personal needs.

Workload

Whether a department is small or large, the volume of work directly affects attorneys' ability to balance. In-house attorneys generally reported a large volume of work, which was increased by the absences of other attorneys, downsizing of the department, and new business initiatives. Almost all the attorneys also reported, however, that they have avenues available to them to control their workloads. A key avenue is using outside counsel. When work has short deadlines that in-house counsel do not feel equipped to meet, or when work is too routine or too complex to be done by in-house counsel, the in-house attorneys can send it to a law firm.

Another key to controlling workload is communication with clients about when work will be done. Unlike most law firm attorneys, in-house counsel often feel they have some latitude in

41. Kirkpatrick & Lockhart LLP Survey, *The 200 Largest Legal Departments*, CORPORATE LEGAL TIMES (Jun. 2003), available at www.corporatelegaltimes.com/editorial/surveys/jun03.cfm (including a law department of 38 on the list of the two hundred largest legal departments).

working with their clients to set realistic deadlines. One attorney reported that her schedule became more predictable once she learned to work with her clients to set priorities.

Budget Concerns

Law departments operate under strict budgets, and in-house attorneys appear to be more aware of budgetary constraints than law firm attorneys. PAR heard many reports of law department managers feeling the need to keep their costs down, a sentiment echoed in the media.⁴² Many consider this to be a good thing. One in-house lawyer explained that, at the law firm where she had worked,

I always had a feeling like I had to do everything 110 percent, even though it may not be what the client wanted or it was a waste of time. I don't mean to sound like one should compromise the quality of their work or their judgment, but when I was at another company, my boss said to me 'Sometimes 95 percent is fine because in some ways, practicing law and counseling is really a risk-avoidance kind of thing. And if you get to 95 percent, the client is really taking a risk for a business reason.' It just made a lot more sense to me. It was still a lot of work, but I also felt like, if I got a contract in as best shape as I could, I was doing a good job for the company, and if I explain to them the risk that they were taking, they were comfortable with it.

The conventions used to allocate budget and measure productivity also have an important impact on work/life in house. Some law departments use a 'headcount' system: they can hire only a specific number of attorneys (or, in some cases, a specific number of total employees, including support staff as well as attorneys), regardless of whether some are working a part-time schedule. Other departments have moved to the more modern system of budgeting and measuring productivity through a 'full time equivalency' system (FTE). In some corporations, in-house departments are given a salary spending cap. They may also have budgets for the amount of money they can spend on outside counsel, whereas in other companies, the cost of outside counsel is charged to the business units who use them.

42. See, e.g., *Orrick Herrington & Sutcliffe 5th Annual Report of Corporate Law Departments*, CORPORATE LEGAL TIMES (May 2002), available at www.corporatelegaltimes.com/editorial/surveys/may02_2.cfm (72.2 percent of respondents agreed that the law department was under pressure to reduce costs).

Budgetary considerations impact balance issues in several ways. First, they determine whether there will be sufficient resources to accomplish the work and allow work/life balance; if a law department does not have enough attorneys, the attorneys it does have will be working long hours and will not feel able to take time off. Second, they can be a factor in whether alternative work arrangements are offered to the attorneys; if an attorney in a law department with a headcount budget and a high workload wants to reduce his hours, he is going to encounter resistance from his supervisor because the supervisor will not be able to hire another attorney to work the hours the attorney wants to take off. This is discussed more in Section II.C.3.

An employee is considered one head for headcount purposes, regardless of whether they work full time or part time. We are given a budget for X number of heads in a year. So that means there is absolutely no incentive for us to hire a part-time person. That is the single biggest deterrent to hiring people part time.

— An associate general counsel in a large law department

Budgets come into play in another way when requests for reduced hours are made: the point in the budget cycle at which the request is made can lead to the denial of request if the request is made just before the start of a new budget cycle and the reduced hours will cause loss of personnel in the new budget.

The Need to Provide Value

In-house attorneys told PAR that when they move from a firm to a corporate setting, they are sensitive to the fact that they have gone from being a revenue generator to a being a cost center. One attorney explained,

In a law firm, the lawyers really drive the business. That's the value and that's perceived as the value, and it's a service organization, basically, and everybody else is sort of a second-class citizen — you're either a lawyer or you're not, and it's never explicitly stated that way, but it's pretty clear that that's the way it works. So lawyers are the preeminent feature of the organization. When you move in house, at least in my experience, it was sort of a wake-up call, it's sort of like, "Oh my God, I'm just a cost center." So in that respect, it was really good to understand that clients want service, your clients in the company, and you need to deliver it.

— A senior in-house attorney

This sensitivity about being a cost center makes many in-house counsel feel a need to prove their value to their clients. The number of hours they work, their availability to their clients, and their determination to be productive are driven in large part by this need. While some law departments are demonstrating their value to their corporations by such techniques as billing their internal clients for hours worked by in-house attorneys and having in-house attorneys keep track of the hours they work,⁴³ such law departments are exceptional. Most companies value their in-house attorneys based on client perceptions; in some environments, this system can create incentives to work long hours.

Opportunities for Advancement

“Because there are six staff attorneys and one general counsel, the opportunity for advancement is somewhere between slim and none,” a full-time attorney reported. PAR repeatedly heard that advancement is not as much an issue for in-house attorneys as it is for law firm attorneys. Those in large law departments described hierarchies where relative newcomers rise in ranks from ‘attorney’ to ‘senior attorney’ to ‘assistant general counsel’ and the like, but all reported that after the initial rise, there are no further opportunities for advancement unless the attorneys higher on the ladder leave. Some attorneys look for advancement by moving to the business side or to other companies. Without a clear career path, expectations of advancement do not drive work hours or workloads for more senior in-house attorneys the way they might in law firms. As set forth in Section II.C.4., however, some attorneys did report having opportunities for advancement foreclosed to them as a result of being on alternative work schedules, and some attorneys report that, when promotion opportunities arise, their company will not offer them to attorneys who do not work long hours.

3. Three Models of Law Departments

Looking at the different types of cultures found in law departments is useful to understanding the ways in which and the extent to which in-house attorneys can find balance between their work and personal lives. PAR found three predominant types of

43. See, e.g., *id.* (16.7 percent of responding law departments keep track of in-house attorneys' hours; 22.2 percent charge the cost of legal services to users).

culture: the corporate model; the law firm model; and the balance-supportive model.

Corporate Model

Often, the in-house attorney will find an atmosphere that is quite different from that of a law firm. Attorneys in a corporate-model department work hard when they are in the office, and they are often in the office for ten hours a day. However, they leave work in time for dinner most nights and they generally enjoy weekends and vacations that are free from significant work interruptions. Their workload is lightened by the fact that they do not have rainmaking responsibilities and billable hour requirements.

Corporate-model departments typically are well integrated into the work/life culture of the corporate organization. Their general counsel may or may not have worked at a law firm at some point during their career, but typically they have been in house for many years. The general counsel in corporate – model departments tend to have a business orientation, and this orientation is reflected in a method of operation that is more entrepreneurial.

In corporate-model departments, in-house attorneys typically are viewed as strategic team members, and their close relationships with their internal clients enable the attorneys to better manage their workloads. They, and their clients, feel they can see busy times coming, and can distinguish between genuine emergencies and projects that can wait a day or two.

Law-firm Model

Some in-house attorneys find in their law departments the same kinds of time demands that exist in law firms — frequent nights and weekends, interrupted vacations, and unpredictable hours frequently exceeding fifty per week. This pattern can arise for several reasons. One is familiarity: when a CEO hires a law firm partner as general counsel, the new general counsel runs the department using the only model s/he knows. The paradigm of long hours and selfless dedication to work most likely led to success at the general counsel's old law firm, and he or she may be reluctant to tamper with success.

An in-house law department can also begin to resemble a law firm when the general counsel and other attorneys bring with them a 'macho' attitude that prizes the ability to work long hours at the expense of all else. Two attorneys in two different corporations told

PAR researchers about being in law departments with competitive, militaristic cultures in which attorneys boasted about the number of hours they worked. An attorney in another corporation in which working a high number of hours is prized reported: "When the new GC came in, he changed the department to be less progressive and more like it was competing with law firms. It became more attractive for more ambitious lawyers. The GC wanted go-getters with a certain attitude, personality, and energy level. Of course, it is easier to be a go-getter if you have a stay-at-home wife."

A general counsel also may respond to pressure to prove the value of the legal department to the corporation, to downsize, or to reduce spending on outside counsel by requiring longer hours of the in-house attorneys, including during weekends and vacations. S/he may require attorneys to record their hours. Some law departments actually have begun billing their internal clients for the time in-house attorneys spend with them, as noted above.⁴⁴

The law firm model also can be found where the legal department shares in a 24/7 culture prevalent in the larger company. In these companies, the pressure often comes not from the general counsel or other lawyers, but from the CEO. For example, one CEO is reputed to have said, "My chief in-house counsel has lots of flexibility. She can work her 80 hours any way she wants."⁴⁵

A story from a law-firm model: An associate general counsel in a large legal department said that, in slow economic times, she works from 9:00 until 7:30 or later, and occasionally works at home. Her hours are typical of attorneys at her corporation. During better economic times, they worked even longer; it was not uncommon then to pull back-to-back all-nighters or work straight through weekends. At her company, "as soon as somebody dreams it up, they want it done yesterday." She said,

One of the biggest challenges is the cultural expectation that if you're really dedicated to the job you'll do anything for it. Everybody is trying to one-up everybody else by working harder and being more available, or getting to know the executives better. Those pressures are very much at odds with any attempt to have balance. Unfortunately, the folks who do the extra things tend to be the ones who get ahead. Once people start one-upping each other, it's a downward spiral.

That being said, because of the exciting work and congenial, bright colleagues, this attorney is "very, very happy" with her move in-house.

44. See *supra* Section II.A.2; n.39 and accompanying text.

45. Statement of Ellen Bravo, Association of Work/Life Professionals Conference (Feb. 28, 2003).

Balance-Supportive Model

Some law departments actively support attorneys' desires to balance their work inside the office and their obligations and interests outside the office. They may be motivated to do so to retain valued attorneys, to align their practices with corporate human resources policies, or because of the philosophy of the general counsel. There is a significant difference between corporations with one or two flexible policies, or one or two managers who respect their employees' lives outside the office, and corporations that make a formal commitment to work/life balance and institute company-wide policies that together support their employees' efforts to balance success at work with other aspects of their lives. The key characteristic of a balance-supportive legal department is that it actively encourages use of alternative work arrangements, and works actively to ensure that such arrangements are not stigmatized. This means that the careers of attorneys with non-standard schedules are not derailed, that they do not suffer negative comments from colleagues, and that the quality of their assignments and other working conditions are not compromised by flexible schedules.

In a balance-supportive model, the number of hours worked or the number of hours spent in the office is not tracked. Rather, attorneys are evaluated based on effectiveness, productivity, and results. Attorneys are expected to work hard and to get their work done, and to be available to clients as needed. But they are also expected to leave the office when they do not have to be there.

Attorneys in balance-supportive law departments may use one or more alternative work arrangements to manage their hours. PAR heard reports of attorneys combining flextime with part time and part time with telecommuting, for example. PAR also heard of attorneys on alternative work arrangements in balance-supportive law departments who were promoted while working non-standard schedules.

Most of the balance-supportive law departments examined by PAR researchers adopted their pro-work/life stance as part of a larger program designed to meet the business goals of the corporation. Typically, these law departments are integrated into a values-driven company, and the law department incorporates initiatives from the corporate human resources department. In one such law department, the organization as a whole had set business goals of stemming attrition and attracting and retaining female employees. The institution of alternative work schedules and the change in the corporate culture to support use of the schedules was

part of a program that included creation of a mentoring program, improved training, and increased communication.

The following excerpt from an interview describes a balance-supportive environment:

Five attorneys work in my litigation office. Two, including myself, are full time. Three work three days a week. We also have two administrative assistants, one on a 9-5-4 arrangement so she has every other Friday off to deal with elderly parents. The three part-time attorneys all have small kids, including some born this year. One part-time attorney has been there eleven years, had child number three this year, took three and a half months off and then came back three days a week on a trial basis. It worked, so we made it permanent and used the two-fifths of her salary they saved to hire another more junior person at three-fifths time (at a lower salary). We hired a third person away from a law firm where she was officially four days a week, but really worked more. She has been there since February and is "tickled" because we delivered what we promised. She took a substantial cut in pay because, to her, the time is worth more than the money.

— Managing attorney of a litigation department

To further illustrate how the balance-supportive model works, three workplaces that promote balance are described in Appendices A, B, and C. These illustrations are provided with the caveat that PAR does not certify any employer as being a 'best' place to work. While the policies described are corporate policies, rather than policies specifically implemented by the law department, they provide a good model for in-house lawyers looking for a framework that would support the lawyers in their office.

Best practices gleaned from balance-supportive models and successful work/life programs in other settings are set forth in Section III of this report.

4. Factors Influencing Model Type

There is no sure way to determine from the outside which model a given law department will fit and, indeed, one law department may have characteristics of more than one model. Several factors play a role in which model a law department will fit.

'Family-Friendly' Corporation

One potential indicator — the philosophy of the corporation as a whole toward issues of work/life balance — turns out not to be completely reliable as an indicator of model type. Law departments that are very much like law firms can be found in corporations known for their 'family friendliness.' For example:

Although it is politically correct for the company to say it supports employees' families, the GC has to 'fess up that he doesn't. He is very open that he doesn't believe in part time, particularly on a permanent basis. He told part-time employees that they would have to work full time if they wanted to keep their jobs.

— An in-house attorney

Rather, in many law departments, the attitude of an attorney's supervisor often determines whether he or she will be able to work flexibly. One attorney said, "The Company has an official policy of alternative work, but, clearly, it's the supervisor's discretion." In several other companies, law department supervisors expressly forbid attorneys from using the company's part-time policies.

PAR found several instances of flexible scheduling and even best practices in law departments in corporations not known for work/life initiatives. In these instances, supervisor discretion sometimes worked to permit flexible work in the law department where other departments may not permit it. It was not unusual for attorneys in corporate-model departments to report that they felt they had more schedule flexibility within the law department than did employees of other departments.

Relationship Between Law Department and Corporate Human Resources Department

The split between human resources policies for the corporation as a whole and those for law departments can be explained in part by the view some attorneys in law-firm model departments have that they are better than other employees and the corporate policies therefore do not apply to them. This attitude can be a carryover from the law firm culture, where a clear line of demarcation exists between attorneys and non-attorneys, or arise from the law department's role in the corporation, including the fact that the policies were mostly likely drafted or blessed by the attorneys themselves. One attorney said that lawyers tend to oppose corporate

human resources policies because they think they are 'above them,' and that because lawyers can often be the highest paid employees, they tend to believe that they should be afforded exceptions to corporate policy. This attitude can lead to a legal department that is more flexible as well as a legal department that is less flexible than the corporation as a whole.

Where consistency is found between the human resources policies of the corporation as a whole and the law department, the consistency may result from a conscious decision on the part of the general counsel to take advantage of the personnel expertise of the corporation's human resources department. As one general counsel noted in a recent article: "Law departments get the benefit of HR knowledge. Garden-variety lawyers don't get that."⁴⁶ As another general counsel told PAR, "there are corporate policies that allow things like flextime and part-time schedules, and as we're part of the corporation, we do that as well." This type of consistency can be found in corporate-model and balance-supportive departments.

Role of the General Counsel

Clearly, as stated above, the background of the general counsel and the general counsel's attitude toward flexible work arrangements are key factors in determining model type. The model type often stems directly from the kind of role he or she plays in the corporation, and the relationship he or she has with the CEO. According to Susan Hackett of the Association of Corporate Counsel, general counsel often fall into one of two general roles based on the maturity of the department and the hiring preferences of the CEO. The 'traditional' — but increasingly uncommon — model is of a general counsel who is appointed because of a personal and long-standing relationship with the CEO (sometimes called the 'golfing buddy' model).⁴⁷ This general counsel is more of a strictly 'legal' counselor to the CEO, and not an integrated member of the larger corporate management team. While still found in some privately-held companies and in a disproportionate number of smaller or 'solo' law departments, this model is increasingly unlikely in larger departments (with more complex management needs) and publicly-traded companies (where broader scrutiny of the independent qualifications of senior executive level hires is more intense). Hackett contrasts the traditional model with the 'modern' model is

46. *You've Hired the Best*, *supra* note 8 (quoting Reid-Dodick from Reuters).

47. Interview of Susan Hackett, General Counsel, Association of Corporate Counsel (Nov. 2002).

of a general counsel who is hired after an intense and professionally commissioned talent search, which includes in-house candidates when the department has a history of cultivating homegrown talent.⁴⁸ The successful candidate from this school usually has strong corporate experience, and is hired by the CEO to perform the role of a top officer in the company, playing an integral part on the strategic corporate management team and in the daily life of the company's operations. This kind of general counsel's role and experience as a seasoned corporate executive who manages larger teams of people with diverse needs and backgrounds makes it more likely that he or she will adopt a law department model that is balance-supportive and focused on attorney-employee retention.

B. Creating Balance on Standard Schedules In House

Despite the long hours, short deadlines, and being on call outside of the office, many in-house counsel — particularly those in corporate-model and balance-supportive departments — report being better able to balance work and personal lives on standard schedules than do law firm attorneys. Those who are satisfied with their balance attribute their satisfaction to one or more of four factors: control over schedules; flexibility in when they work; the ability to hire outside counsel; and the ability to focus their efforts on the work that matters most.

In general, in-house counsel have more control over their schedules than do law firm attorneys. They can work with internal clients to set realistic deadlines and, when a project does not need to be done instantly, they can tell their client it will have to wait without fear of losing the client's work to another firm. As one in-house attorney told PAR, "I'm in better control, although not in absolute control, of my schedule."

As mentioned in Section II.A.2, some law departments retain a very traditional approach to supervision that requires employees to be in the office during certain hours, and even to sign in and out, including for lunch. Yet this is unusual. Today, most in-house counsel have considerable flexibility. They describe three different types: the ability to set their own starting and ending times, the ability to occasionally be off duty during some portion of the company's standard workweek, and the ability to do some work from home. Many attorneys work in offices without set office hours — either official or unofficial. The flexibility many lawyers want —

48. *See id.*

whether to avoid the worst of rush hour, match children's schedules, or start the day at the gym rather than the office — is acceptable in a large number of corporate-model and balance-supportive law departments. Similarly, most in-house law offices have no problem with attorneys being out of the office for occasional personal commitments or occasionally working from home. While many people mentioned personal needs related to children, clearly even lawyers without children value flexibility to take care of home repairs, doctors' appointments, or other personal matters.

"Historically, in my department, attorneys all worked the same set hours. When I became general counsel, I instituted flexibility. I knew the attorneys in the department were committed and would get the work done. We have core hours, subject to client demands and work needs. But if you don't have to be here, you don't have to be here, as long as your work is getting done."

— General counsel for a large company

Another key component of balance is the ability to hire outside counsel when the workload is excessive or the deadlines are too short.⁴⁹ Outside counsel act as a safety net, and also can take the lead in time-intensive litigation, as this general counsel noted: "Ultimately, I think I spend more time working in house, but the difference is I don't have to worry about briefs. I don't have to worry about trials. If a particular requirement doesn't fit into my schedule, I hire an outside law firm to do it."

In-house counsel state that another key to balance is the ability to focus on the work that matters most. Law firm attorneys spend many non-billable hours marketing their practices and developing relationships with potential clients. With little concern for business development, in-house attorneys can use their time more productively. In addition, they typically enjoy freedom from keeping track of billable hours. They can farm out routine work to law firms. They can oversee litigation and align strategies with business objectives. Many attorneys reported that, as a result, they find their work interesting and engaging. Moreover, in-house attorneys report that they have a "sense of mission" and are "part of an organization," both of which transform their relationship with their work. As one former general counsel said, "Frankly, I felt appreciated. If I'm going to leave my kids day in and day out, I

49. In a 2001 Roundtable, John S. Redpath, Jr., of Home Box Office noted, "If the law firm structure changed so we didn't have them as a resource for all sorts of purposes, life inside would be much more difficult. We're not staffed to handle significant extra work." See *You've Hired the Best*, supra note 8.

better really be getting something for it. And it's not just the money. It's feeling like you're really part of an organization that you're really contributing to."

PAR heard numerous stories from in-house attorneys in corporate model and balance-supportive model law departments who feel they have a satisfactory balance without using alternative work schedules:

- One father told PAR, "I went in house to effectively maintain a dual career marriage and to have babies." He explained that the position he has now "is a very challenging situation with better hours, almost the best of all worlds — good hours, very challenging, good opportunities, but with out the burnout pace and expectations of a law firm."
— A male in-house attorney at a large corporation
- An attorney who had been frustrated by the lost opportunities for growth when she tried part-time work at a law firm noted that, to avoid those career limitations, she decided to work full time when she joined a small in-house legal department. Her hours generally are from 8:30 a.m. until 6:00 p.m., but she explains that as long as she gets her work done, her employer doesn't care how or where she does it. Accordingly, when she needs to leave work for school activities or doctors' appointments, she simply makes the time up later. Working this way, she has received promotions that she does not think she would have received if she were part time, while still giving her children the priority they need.
- A father who has been in house for over ten years told PAR that the next day he would be leaving work mid-day to attend a school play because, at his company, "family's important." He noted that, "by the same token, if the pager goes off in the middle of the show tomorrow, I'm going to step outside, pick up the cell phone, call in and see what the problem is because I have one client, and I have to keep that client very happy. But I can be at the Christmas show." This was not a one-time opportunity in recognition of the holiday season. This attorney reported that he is "fortunate enough to have a client and a general counsel that don't require a whole lot of face time. The concern here really is 'Is the work getting done?'"
- A woman who had been one of only one or two attorneys in her company's legal department had no problem leaving in the middle of the day for a teacher conference or school play. She would simply make sure she finished her work by staying later or coming in earlier.

- A single woman working in a large law department noted that she owns her house and “when something goes wrong, I’m the only one there to take care of it.” She reported that it was not a problem to take off for such reasons, because “we try to treat people like professionals here. Nobody checks what hours you are here or mandates that you have to be here between 9 and 5.”
- “I worked in one law department where the hours were very rigid and you had to be at your desk. Now I am at another company with a much different culture. I can work full time even though I have children because my hours are flexible now. I come and leave when I need to, and I work hard and get the job done, but I can take time off for doctors’ appointments and school plays without having to hide it.”
— A female in-house attorney
- “We consciously created flexibility and treat our employees well. Nothing is in writing about flexibility, but it works better than not having flexibility. Everyone does what they are supposed to do. Flexibility has an impact on your happiness and the way you feel about your job. I have been able to work full time because of the flexibility — the important thing is not the exact hours I am in the office, but that the work gets done.”
— A general counsel in a high tech company

C. Finding Balance on Alternative Work Schedules In House

Some in-house attorneys do not feel they can balance their work and personal lives on standard schedules. For some, the inability to balance is caused by a rigid, law-firm model work environment that requires face time and inflexible arrival and departure times. For others, the inability to balance arises from personal needs that cannot be met on a fifty-hours-a-week schedule, no matter how flexible that schedule is. Alternative work schedules allow these attorneys to remain employed.

1. Flextime

We trust our attorneys to handle huge deals. Why shouldn’t we trust them to set their own work schedules?

— Candi Lange, Eli Lilly

As is clear from the foregoing discussion of balance on a standard schedule, flexibility is common in law departments. Most in-house attorneys do not consider flexibility to be an "alternative work arrangement," but rather a characteristic of their workplace culture. Both male and female attorneys take advantage of schedule flexibility, and flexibility is not limited to attorneys who are parents of young children.

In several law departments in PAR's study, flextime is considered a formal alternative work schedule. The departments set "core hours," such as from 10 a.m. to 3 p.m., or even 9 a.m. to 5 p.m., during which attorneys are expected to be in their offices for meetings. Attorneys can arrive anytime before and leave anytime after the core hours, as long as they either work the minimum number of hours required by the department or complete their work. In some law departments, attorneys are expected to adhere to the arrival and departure times they pick, and may even have to have supervisor approval of their schedule or of deviations from their normal hours. Others are less structured and provide little supervision over the non-core hours as long as work is getting done and there are no problems.

Flextime is one of the more commonly-available alternative work arrangements. It costs employers little, if anything, and is easy to set up and administer. It can be offered to all the attorneys in a law department, regardless of number, without having a negative impact on the department's productivity. In addition, it can benefit the company by having attorneys in the office extended hours, as one general counsel noted: "The company has people who come to work as early as 6:30 and people who are here as late as 6:30 at night. Being in a small company with a national focus, it is very helpful to have legal advice available to cover that longer day."

Not all experiences with flextime are successful, however. One attorney reported that her employer, which has a reputation for being family-friendly, officially approved of flexibility. Because she is not a morning person, she arranged official hours that started and ended one hour later than the rest of the office. She found that if she was late by even a few minutes, people perceived her as having arrived incredibly late, since they already were immersed in work. On the other hand, nobody recognized the many days that she stayed an hour or more later than scheduled. Moreover, the general counsel appeared not to support the usage of flextime; he stated that there was only so much flexibility to go around, and once it was used up, no one else could work part time or non-standard hours.

One general counsel who works long hours reported that in-house, unlike at a firm, she can control when she starts and ends work so that she can be available to her children. She tells her lawyers that she does not care what time they start. Because she often has done large chunks of her own work outside standard business hours (e.g., working from 3:30 a.m. till 7:00 a.m. before having breakfast with her children), her idea of core hours is minimal: she expects that everyone will be in the office between 10 a.m. and 2 p.m. No one abuses this flexibility. People start as early as 6:00 a.m. or as late as 10:00 a.m. This range is fine, "as long as they can figure out a way to keep the people they interact with happy, and to get the work done."

— A general counsel of a medium-sized law department

2. Compressed Workweeks

Compressed workweeks are available at only a handful of law departments studied by PAR, but the number appears to be on the rise. Compressed workweeks allow attorneys to work the same number of hours as full-time attorneys but in fewer days per week. PAR found examples of attorneys working an extra half-hour a day and taking every other Friday off, much like attorneys do pursuant to a popular alternative work program in the federal government. More commonly, attorneys on a compressed schedule are working four, ten- or eleven-hour days and taking a full day per week off. A few attorneys work three long days of twelve or more hours and take two days per week off.

These types of compressed schedules can work in house, where the hours tend to be more regular or predictable than the hours in a law firm. Another factor making it possible to work compressed schedules in house is the number of hours worked per week. It is feasible to compress a forty or even fifty-hour workweek into fewer than five days, but much more difficult to compress a law firm-like sixty-hour workweek.

Although attorneys on compressed schedules are out of the office for some part of each week, they do not appear to suffer the type of stigma that part-time attorneys do. (Stigma and part-time work is discussed later in this section.) Attorneys who work compressed workweeks reported that they did not perceive a difference in their advancement opportunities as compared to full-time attorneys, and they had the same pay and benefits as full-time attorneys.

A key reason we have been able to retain people long-term is our flexibility. For instance, we have an attorney who is a dad with young children. For him, a big factor in staying here is the flexibility. When he needs to stay home with a sick child, he can do that. He can work from home, he can work on the weekends, as long as the work is getting done and as long as we are serving the client. It is not critical, outside of certain core activities, that you be here every minute of every day. More than anything else, this helps the attorneys. With a 'flex' day schedule, the attorneys don't miss so much because they have some control over their schedules. I choose to work the core hours. Sometimes I work longer hours. I have the freedom to do that at this point in my life but I don't always have to do it.

— A female general counsel

3. Job Sharing

Job sharing, although almost unheard of in law firms, is a viable option for attorneys in house. In fact, PAR learned that job-sharing attorneys, their supervisors, and their clients tend to view it as preferable to part-time work.

Job sharing typically arises when an attorney wants shorter hours, but limitations are placed on his or her ability to achieve this by workload demands or by the law department's personnel budget. Workload limitations arise when a small department cannot get its work done if it loses hours when one of its attorneys cuts back his or her hours. Personnel budgets impact an attorney's ability to reduce his or her hours when they assign attorneys to departments based on a 'headcount.' In a typical headcount budget, a warm body is considered one "head" regardless of whether it is working full time or part time, and a supervisor who allows an attorney to reduce his or her hours thus loses hours.

Faced with an apparent conflict between retaining a valued attorney who is unable to work full time and competently managing the law department that needs to do a certain amount of legal work, supervisors have found job shares to be a workable and creative solution. In a job share, two attorneys share one position. While theoretically each attorney works and is paid fifty percent of what a full-time attorney would be paid, most of the job sharing partners interviewed by PAR researchers each worked three days per week, overlapping on one day. Several job share partners worked or were paid unequal amounts. In one job share pair, one attorney worked

two days per week and the other three; in another pairing, one worked fifty percent and the other sixty percent.

In a separate example, two job share partners worked unequal amounts but received equal pay because the partner who worked fewer hours was more senior.

"We were a small group within the company's legal department, and one of the attorneys wanted to work part-time. It was going to be difficult for us, but we didn't want to refuse her. I had a daughter in elementary school, and decided to work part-time to share my colleague's position, and we hired a full-time attorney to replace me. My colleague worked a 50 percent schedule, and I worked 60 percent. We didn't share work. We had our own caseloads. My supervisor supported it from the beginning, and it was invisible to my clients."

— *A male in-house attorney*

PAR found two types of job sharing arrangements, which it calls 'islands' and 'twins.' In the islands type of job sharing arrangement, two attorneys share one position but do not share a caseload. In fact, PAR heard from two sets of islands job sharing partners that they not only don't share caseloads, but are not even practicing in the same area of the law. Little, if any, coordination between islands job sharing partners is necessary. They may need to coordinate their schedules if they share an office or support staff, but otherwise function independently of each other.

PAR interviewed one job sharer whose arrangement changed from a twins model to an islands model. She and her job share partner have been together for seven years. At first, they shared work and clients. Over time, each began to have her own workload: "We've divided up the work and back each other up but we don't have a list of each other's projects."

— *A female senior counsel in a large law department*

The second type of job sharing, the twins model, presents a creative and potentially very advantageous working arrangement for both the attorneys and the law department. In a twins job share, two attorneys share both a position and a caseload. They coordinate their schedules so one of the partners is always in the office, and some overlap time is typically included. They also coordinate their caseload, keeping each other apprised of progress on different matters so the partner who is in the office can pick up where the other left off. When the job share partner who has been out of the office returns, he or she is able to begin work immediately rather than having to wade through emails, voicemails, and memos.

Supervisors of job sharers praised the twins model as giving the law department complete, and sometimes more than complete, coverage of office hours. Supervisors noted that clients got timely responses from the partner in the office, and vacation coverage was no longer an issue the way it is with standard schedule employees. In addition, job sharing gives supervisors more flexibility in staffing; one supervisor noted that if there was a sudden increase in work, one of the job share partners could work an extra day or two for a while to help out. If he didn't have that option, he would have to hire a temporary attorney who would not know the business or the culture.⁵⁰

Job sharing partners also reported very high satisfaction with their twins model work arrangements. Several pointed out that a twins model job share arrangement is far less stressful for the attorneys than part time, because when an attorney is scheduled to be out of the office, someone is covering his or her desk and he or she is much less likely to get called at home. One attorney contrasted the tense, frantic feelings she had while a part-time attorney trying to do a full workload in fewer hours and the much calmer feelings she has now that she has switched to a twins model job share.

An islands model job share, however, does not provide the same type of relief because it is essentially two separate part-time positions:

My job share is sharing a slot and an office with someone, not a workload. No one handles my cases when I am not in the office. When the volume of work exceeds what I can do in my days in the office, I have the same problems as anyone else who works part-time — except that if I come in on a day off, I don't have office space to get my work done. For me, job sharing does not provide a relief valve.

— A senior in-house attorney

An additional benefit that job share partners enjoy is having another attorney with whom they can discuss the matters on which they are working. One attorney pointed out that her clients are getting the benefit of two lawyers as a result of the job share, and said that she didn't think she would seek out other attorneys in the group to discuss issues if she were full time or even part time.

50. A supervisor of an islands model job share arrangement made a similar observation regarding staffing flexibility. He noted that when there is a special project, one of the job share partners works an extra day and is paid extra. There is no learning curve for her, and it does not result in another FTE.

Job sharing partners enthusiastically described the factors in their success. All of the twins model partners emphasized the importance of finding a job share partner who is either similar or complementary to themselves. Many used the word ‘marriage’ to describe their arrangement, and talked about the ‘give and take’ inherent in their relationship with their job share partner. Janet Hunt, an associate counsel at Fannie Mae who shares a job with Jeanne Runne, found it was easier to share a position with Runne because they had worked together previously, although in separate positions.⁵¹ Nancy Weiss and Jessica Benson of Pfizer had not worked together before at the time they began their job share, but found that their “similar work styles, organization skills, and approaches to legal issues” made their job share successful.⁵² They note that an additional factor in their success is their communication with each other and their openness with their clients about their arrangement.⁵³

PAR heard three concerns about job sharing during its study, two of which apply equally to the islands and the twins models. First, if the job sharing attorneys are working enough hours to qualify for benefits under the employer’s plans, the employer will have to bear the cost of an additional employee’s benefits. The cost of benefits is not inconsequential, but when viewed in comparison to the benefits of job sharing — retention, coverage, and productivity — it may seem to be a good trade-off.

Second, to the extent that twins job sharing partners spend time keeping each other informed about the status of work, some supervisors fear that they are less efficient than a standard schedule attorney. Job sharing attorneys believe this is a non-issue. As a practical matter, heavy workloads and other time pressures limit the amount of coordination to only what is necessary. One attorney stated that she and her partner do not want to make additional work for themselves, or spend time unnecessarily, so they keep their briefings short. Moreover, many job share attorneys reported that they do not get paid for the time they spend coordinating. Several said they never get paid for the time they spend at home talking with their job share partner, and one reported that she does not even get paid for the overlap time she spends with her partner in the office. PAR does not advocate not

51. Alea Jasmin Mitchell, Minority Corporate Counsel Association, *Balancing Act: Work-to-Life Balance in Departments and Firms*, DIVERSITY AND THE BAR 10, 16 (Sept/Oct. 2003).

52. *Id.* at 16-17.

53. *Id.* at 17.

paying attorneys for the time they work, but good time management and workload management will reduce any inefficiency to the bare minimum.

Finally, PAR heard concerns about what would happen if a job share partner wanted to return to full-time work. Returning to full time would mean either firing the second job share partner or increasing the law department's personnel budget — neither of which is likely to be feasible. One attorney who had been in a job share recounted that a promotion that allowed him to return to full time:

My job share had been going well but I always knew I would need to go back to full-time; so, about a year later, when my daughter went on to middle school, my boss moved to another position within the company. I applied for that promotion and got it, which gave me the opportunity to work full-time. We hired another person to work in my former position.

Another reported that her supervisor addressed the issue of returning to full time at the outset: "My boss asked me to agree at the beginning that my job share arrangement would be 'permanent.' Once the company hired a job share partner for me, I could not just decide to go back to full time."

When I asked to go part time, my boss suggested that I job share. She was concerned that the clients wouldn't be covered on the day I wanted to take off, and also that I would have to do a full workload on a part-time schedule. I was concerned about relying on someone else to do some of my work, so I talked with other job sharers in our company. It was clear it was working for them, so I decided to give it a try. I had input into the final choice when my partner was hired. At first, my partner worked the same hours that I did and 'shadowed' me so she could learn the job and the corporate culture. Now, we each work a designated three days a week. If we need to revise the schedule for personal or work-related reasons, we do.

It is working really, really well. My partner and I have similar styles. We tend to give the same advice, and we have the same manner in working with clients. We both want the same thing: to do a good job, work well together, and go home. There is no competition, and I don't have to worry that she wants to get ahead of me on the promotion track. Although we share most of our work, each of us on occasion is assigned to projects that we handle individually.

We keep each other informed about what is going on in the work we share. We copy each other on emails, and send an email summary at the end of the day. We talk on the phone as well. I don't mind talking to my partner on my day off because I like her and we are a team. If a client starts a matter with me while I am in the office, I let him or her know that if the matter requires follow up on a day I am not scheduled to be in, my job share partner will handle it and I will have briefed her on the matter. We keep each other informed so the client is not in a position of having to repeat information he or she already gave to one of us.

We change our outgoing voicemail and email messages to reflect our schedules, and we tell clients to email both of us and that whoever is in the office will respond. The clients feel we are interchangeable and very responsive — they often forget which of us they talked to because we are so similar. They also like it because we respond so quickly to them and no one is left hanging.

— A job sharing twins model attorney

4. Part Time

Part-time work is not as common or successful in house as it is in law firms. While PAR did interview several part-time in-house attorneys who were happy with their arrangements and felt that they were valued members of their departments, a far greater number reported that part-time positions were hard to come by and resulted in significant stigmatization that affected their careers. The following two excerpts from interviews represent opposite ends of the satisfaction spectrum. Here is a success story:

My part-time arrangement works really well. I work hard, and get a lot done. Part-time attorneys can get as much done as some full-time; part-timers work the entire time they are in the office and don't have time to take extended lunches or breaks. All my clients know I am part-time, and they don't hold it against me. I have been promoted while working part-time. The other attorneys in my office appreciate balance, too. Some, including the male attorneys, work from home occasionally.

— A female attorney in a small law department

More common is a very different sort of story. Here is an example that, not surprisingly, comes from an attorney in a law-firm model law department:

Part time is greatly disfavored in the legal department. Part-timers work many more hours than they get paid for. I work part time, and I go into the office on weekends, sometimes for eight or nine hours. For one woman, part time is a joke. She is always in the office on her day off. If you are part time, you're afraid to irritate supervisors and clients because you might lose your arrangement, so you can't say anything when they always schedule meetings on your day off. Our general counsel does not believe an attorney can be professional on a part-time basis. My reviews have suffered because of my part-time status. One part-time attorney was told her career would be better if she were full time.

— A female part-time attorney in a large law department

Schedule Creep

Schedule creep is the tendency of part-time attorneys to work an increasing number of hours until their hours return to full-time levels. In PAR's law firm study, schedule creep was found to be a major problem in law firms. In this study, PAR found it to be a major problem in law departments as well. Most of the part-time attorneys reported working many more hours than they were scheduled, either from home or in the office on a day off, typically without additional compensation.

I was trying to condense my full-time job into a part-time schedule.

— An in-house attorney

Quite frankly, I think the part timers work as hard as the full timers, they just get the forty hours into four days instead of five days, but I don't think the part-timers are given full credit for the work that they do. . . . Every part-time lawyer I know is still carrying a full case load.

— A former associate general counsel

Full-time hours are around fifty per week. I am part time and I sometimes work eight or nine hours on the weekend.

— A female part-time attorney

Schedule creep is usually the result of poor planning. Typically it reflects a failure of supervisors to adjust the workload of a part-time attorney to be commensurate with his or her schedule. As one attorney interviewed by PAR put it, "Aren't we missing something

here? Someone, normally a woman who's a mom, goes to a part-time schedule, but there's nobody brought in to make up the difference. So I always thought, isn't she just doing her same job, but in four days a week?"

Stigma

Part-time work is highly stigmatized in many law departments, to a much greater degree than even in law firms. Part-time attorneys reported isolation, loss of status within their departments, negative comments from supervisors, colleagues, and clients, loss of desirable assignments, elimination of advancement opportunities, and relegation to sub-par office space. Some of the comments received by PAR show the severity of the problem:

We have a lawyer who worked a partial schedule. When she had her first child, she did a half-time role and she received negative feedback from her colleagues. She's not considered one of the valued people anymore even though she has returned to full time. She had always been a rising star, but now she's not on the star track.

— A female in-house counsel in a large law department

Without a doubt, my evaluations have suffered because I'm part-time. I get criticized for small things that are not an issue with other attorneys. Clients always have to wait for answers from an attorney, but once I went part-time, my schedule was attacked as the reason they had to wait.

— A female part-time attorney

I haven't been tapped for anything special in a long time. No one is thinking outside the box to get me involved. It would be nice to be asked. I may be able to make the time.

— A part-time attorney

Lack of advancement is a recurrent issue for part-time attorneys. PAR found many instances where part-time attorneys were informed that they could never advance unless they returned to full time work: "My part-time status does affect my promotion opportunities. I'm not considered someone who could head the department or have certain responsibilities," said one attorney who had worked at the same large corporation for more than ten years. Another recounted being eligible for promotion — but not if she remained part time: "A promotion opportunity opened up last year.

I felt qualified and applied, but I did not get it. I was told that the main concern was my part-time status.”

Reasons for Negative Perceptions of Part-Time Work.

Long hours, macho attitudes, competition for limited advancement, and management that is not itself in a position of juggling the demands faced by a two-income earner family combine to create a culture that rejects or undermines part-time policies.

In addition, it became clear during PAR's study that budgetary constraints are a threshold deal breaker in many law departments. Personnel budgets that are based on headcount impose a sharp constraint on a general counsel's or supervisor's ability to grant part-time requests freely; their department's productivity is going to suffer if they can get only part-time work out of full-time slots.⁵⁴

The unreceptive attitude toward part time in many legal departments may also reflect the fact that part time in house tends to mean shorter hours than does part time in law firms. PAR found that 'part time' in Washington law firms typically means a forty-hour week, and can require a schedule of close to fifty hours. In sharp contrast, PAR interviewed in-house attorneys for whom part time meant working an average of thirty or fewer hours per week. The lower number of hours is attributable both to the shorter in-house workweeks and to the fact that more in-house attorneys work a smaller percentage of a full-time schedule, often sixty percent, rather than the eighty percent that is common in law firms.

Closely related to this is the issue of face time. In many law departments, a physical presence in the office within shouting distance is often perceived to be the only way attorneys can ensure that clients will seek their advice before taking action. Several attorneys discussed how their effectiveness as counselors directly correlated with the amount of time they spent in the office. One attorney who initially worked one day per week as a small company's general counsel described that situation as "out of sight, out of mind." The client simply did not ask questions when he was available so little. When he increased to three days per week, he was seen as part of the team and people included him more actively and asked him the necessary questions.

Interestingly, several attorneys reported that part time is generally more successful on a four-days-a-week schedule than three:

54. See *supra* Section II.C.3.

As soon as I went three days, the tables just turned. I wasn't put on anything that was really strategic. So I went back to a four-day schedule, and that has made a discrete difference, sort of a critical mass kind of discrete difference in my ability to get more strategic, long-range projects and my ability, and the guys' ability to think I can attend meetings where I just get a little bit more profile.

— A female attorney

The wariness about part time in house may well reflect an additional feature of life in law departments. In the absence of billable hours, some in-house attorneys felt that their job evaluations were heavily dependent on politics and perceptions, and for that reason they could not afford the stigma associated with part time. Because part-timers are so often perceived as 'not serious' or 'uncommitted,' some attorneys said it was very risky to go part time in the context of what they perceived as a 'popularity contest' environment where one's popularity determines bonuses, advancement, assignments, and even whether one remains employed. As one attorney who works for a large corporation told PAR,

You are completely dependent upon the perceptions of your colleagues and clients. It is important to be viewed as fitting in with your group, a hard worker, someone who can be counted on. If you worked part-time, I think others would see you as deviating from this cultural norm. While no one would say so explicitly, part-time work would be likely to affect their *de facto* perceptions of you and to increase your burden of proving yourself.

5. Telecommuting

Telecommuting, also called flex-place or teleworking, can mean working from home full time, or working from home only one or two days a week, with the remainder of the week spent in the office. It is a popular option with both male and female attorneys, who say it saves time by eliminating long commutes, reduces stress levels, and improves productivity. "That's made my life so much less stressful" said one.⁵⁵ Another reason for its popularity is that working from home does not involve a reduction in hours or workload, and therefore does not typically carry the stigma often associated with part-time work.

55. Pamela Kruger, Jobs for Life, 34 FAST COMPANY 241 (May 2000) (quoting Jayne McNicol, a Senior Audit Manager at Ernst & Young)

Despite attorneys' desire to telecommute, most attorneys report that regular telecommuting is not an option in their law departments. PAR found that telecommuting tends to exist only informally and occasionally, most typically as flexibility to work from home while waiting for a repairperson or to care for a sick child. This gap between desire and availability may at least partially explain the dissatisfaction of many in-house counsel with their offices' telecommuting policy.⁵⁶

Two factors contribute to the unavailability of regular telecommuting. First, as discussed above, many attorneys are in law departments that require a physical presence in the office in order to be available to clients. Although some attorneys believe they can just as easily advise clients over the telephone ("Where my body is is irrelevant to the counseling function"), their supervisors disagree.

Second, some supervisors may be uneasy with telecommuting because they cannot be certain their attorneys are actually working while they are not in the office.⁵⁷ This uneasiness may be the product of a lack of methods for measuring productivity and results. Attorneys who telecommute told PAR researchers that they believe they are better able to concentrate and are more focused when they work from home.

Nonetheless, PAR found several workplaces with active, well-used telecommuting programs. One attorney noted that many of the lawyers telecommute in her law department. Another reported that her department had more men telecommuting than women. Some companies provide substantial support for telecommuters. For example, Merrill Lynch spends approximately \$7,000 per person to equip telecommuters with a laptop, printer, and fax machine, and provides a 24-hour hotline for technical assistance. This expense is offset by the saved costs of reduced absenteeism, which some industry experts estimate to be as high as \$2,000 per employee.⁵⁸

56. "[D]espite promises of flexibility at many companies, only 37 percent of respondents, on average, gave telecommuting provisions at their workplaces high marks." Aman, *supra* note 19.

57. Robert Ingle, *Telecommuting: 'Taking Your Work Home With You' Will Never Be The Same Again*, MARYLAND BAR J. 1, 3, 6 (Nov/Dec 2000).

58. FLEXIBLE STAFFING PRACTICES, *supra* note 14; see also Gil E. Gordon, *Telecommuting — Well-Matched to the Financial Services Industry*, THE SECURED LENDER (Sept. 1, 1999) (discussing the various reduced costs involved with telecommuting).

III. BEST PRACTICES: RECOMMENDATIONS FOR CREATING EFFECTIVE WORK/LIFE PROGRAMS IN HOUSE

Each corporation is unique. Consequently, each will have to craft a work/life policy suited to its own corporate culture and business needs. Given this, some may question the necessity of having written policies at all — and, indeed, PAR has found some corporations where work/life decisions are handled on an ad hoc, case-by-case basis. Yet any major corporate policy that is handled solely on an ad hoc basis is bound to lack transparency and to give the impression or the reality of ‘playing favorites,’ or having similarly situated people being treated differently. For these reasons, PAR strongly encourages detailed, written work/life policies and a sustained focus on effective implementation.

Corporations, in general, are ahead of law firms in an important way: most already conceptualize management as a separate and respected function. Many also already have departments that focus on human resources issues; some have separate work/life programs, and a few have path-breaking work/life initiatives. Indeed, in some companies, the solution is simply to apply existing outstanding work/life programs to corporate legal departments that have up to now enjoyed — or suffered from — immunity from what are otherwise company-wide policies. The law is not some magic arena set apart from other parts of corporate life. There are time pressures in the law; but there are also time pressures in many other arenas of corporate life. Particularly as corporate legal departments increase what they define as ‘full time,’ it will become increasingly and urgently necessary to recognize that corporate legal departments should be an integral part of corporate work/life initiatives.

What follows are some of the best practices that PAR has gathered during its study. Each best practice is already in use successfully in corporate life. It should be noted that most of the best practices included below are in use in corporate legal departments; others are general corporate policies.

In the current global environment, another fertile source of best practices is Europe. Far-reaching national statutes are now on the books in some countries. For example, in the U.K., the 2002 Employment Act gives most parents of children under six or of disabled children under eighteen, the right to request flexible work arrangements to care for their child(ren); it requires employers to consider each request seriously and sets a timetable during which an employer must either accept the proposal or

describe clear business grounds why it cannot do so. In the Netherlands, the Adjustment of Hours Act requires employers to grant suitable requests, not just from parents with child care needs, but from all employees, for reductions or increases of hours (in their current job), with only a narrow business-necessity exception. Commentators expect Dutch courts to take a hard line with businesses, and predict that a large employer will rarely be able to meet the statutory standard for turning down a request. Increasingly, global companies will find that their European counterparts — and their European branches and subsidiaries — are offering flexible work arrangements and quality part-time work on a scale as yet unknown in the United States. Once these laws, many of which are very new, become well established, Europe may well become the key source of best practices for U.S. companies. U.S. corporations will be able to draw on policies and practices that are tried and true in their particular businesses by drawing on the experience of their European counterparts.

A. Creating Fair and Effective Work / Life Programs

1. Individualized Flexibility

In-house lawyers who are skeptical of the feasibility of high-quality flexible jobs often assume that 'flexibility' means part time and, indeed, a very particular kind of part-time schedule in which an attorney leaves every day at 3 p.m. or is out of the office for one or two days per week. It is important to recognize that fewer hours per day and fewer days per week are not the only flexible work arrangements. Best practices employers typically allow many different types of schedules, sometimes including combinations of different types of flexible arrangements, and limited only by business needs to get the work done. These employers realize that alternative work arrangements will not retain valued employees unless the alternatives actually meet the employees' needs for time to take care of obligations outside of the office. It does little good, for example, to offer to let an employee work two fewer hours each day when what he really needs is Thursday afternoons off to take his mother to her chemotherapy appointment.

Some examples of different types of flexibility and creative combination of alternatives follow.

Annualized Hours

Part time or compressed schedules sometimes involve not a given number of hours a week, but a given number of hours a year. The annualized hours model is particularly helpful in fields where periods of intense work are required, as in some kinds of transactional work and litigation. The key to making annualized hours work is a corporate culture where annualized hours employees actually feel free to take time off once a crunch is over.

Sabbaticals

At New York Life's legal department, under Sheila Davidson, new parents can take sabbaticals.⁵⁹ Deloitte takes this approach to its logical conclusion with its "periodic reduced workload" program, which enables people to take blocks of unpaid time off of work — often in the summer — and then return on either a full-time or less than full-time basis for the remainder of the year.⁶⁰ Deloitte has also allowed employees to take thirty-plus days off at twenty percent of pay during slow periods.⁶¹

Buying Additional Time Off

Sometimes people prefer more time rather than more money; that's the central message of the work/life movement. Recognizing this, some employers allow in-house attorneys to buy additional days off, a program that is much appreciated by some attorneys. The NASD, for example, permits employees to purchase up to three additional vacation days through its cafeteria plan.

The following list is from the Alternative Work Policy of the NASD, a company-wide policy that applies to the law department as well as other departments:

Compressed work (full-time):

- *Four days each week*
- *One day off every two weeks*
- *One day off per month*

Telecommuting:

- *Full days at home*
- *Partial days at home*

59. See Aman, *supra* note 19.

60. See E-mail from Kathryn Davie Wood, *supra* note 18.

61. 100 Best Companies to Work For, FORTUNE (Jan. 20, 2003), available at www.fortune.com/fortune/bestcompanies/snapshot/0,15154,79,00.html.

Flexitime subject to core hours

- *Job sharing - islands model*
- *Job sharing - twins model*

2. Keep an Open Mind: Virtually Any Job Can Be Done Flexibly

PAR found that, like in some law firms, the accepted wisdom in house is that part time cannot work in certain practice areas such as litigation or mergers and acquisitions. Yet as PAR researchers talked to in-house lawyers, they found companies where in-house counsel on flexible schedules were doing all of the jobs commonly thought of as not suitable for those on a flexible schedule.

A best practice is to view all jobs as presumptively capable of being done on a flexible schedule, and work with attorneys to identify methods for accomplishing all their work at different times, in different places, or in different manners. One company sets out this presumption on its website, providing tools to supervisors and employees to use in evaluating the tasks and responsibilities for each job and thinking through ways they can be accomplished on a non-standard schedule.

Can supervisors have flexible work arrangements? In many companies, attorneys have been told that they have to be on a standard schedule to be considered for a supervisory job. In other companies, attorneys have not been told so directly, but have gotten the message from their departments' culture. One attorney articulately challenged the assumption that a supervisor cannot work flexibly, "It couldn't work' to have supervisors part time has got to be wrong. Lots of people have significant supervisory responsibilities while traveling all the time."

Can litigators and transactional attorneys work flexibly? Here's what some attorneys told PAR:

Interviewer: How did you convince people that part-time schedules work in litigation?

Attorney: We win our cases.

"People who say you can't do it in litigation have never tried."

"Litigation does have externally imposed deadlines. It requires a well-trained staff who know litigation; technical resources (e.g., brief bank, ability to do research from home or hotel room); same corporate outlook about personnel throughout the corporation (since clients usually have

flexible hours, client expects high quality work but it doesn't have to be done at a set time. "

Interviewer: Sometimes we hear that you can't do deals part-time.

Attorney: Well, that's dead wrong because that's all I do. All I do is deals.

3. Fairness: Available to Everyone

The media has reported a backlash against flexible work arrangements in some workplaces because standard-schedule employees resent the apparent favoritism in scheduling given to parents or to supervisors' "pets."⁶² Effective management can address the two prongs of backlash: first, alternative work arrangements should be available to everyone; and, second, work/life programs should include provisions for workload management so attorneys working standard hours do not get overburdened with work that attorneys on flexible schedules cannot do.

The Ad-Hoc-for-Superstars Problem

Backlash can arise in situations where part-time arrangements are granted on an *ad hoc* basis to keep a valued employee, generally without advance planning to determine how the work no longer done by the part-timer will be covered. PAR calls this the ad-hoc-for-superstars approach. As one supervisor told PAR, it makes no business sense: by denying part time to less-than-superstar performers, an employer is insisting on having, and paying for, one hundred percent of its less stellar employees' time, while being willing to give up some of its most talented employees' work.

The 'Special Treatment for Parents' Problem.

Another practice that fuels backlash is when single workers are always called upon to travel, or to work on holidays, on the grounds that other workers have "have a family." It is important to recognize that all workers have families. Those who do not have children have partners, parents, siblings, cousins, nieces, and nephews. Even if single workers do not want to spend the holidays with their families, they, too, need time off and relief from constant travel. Companies with effective work/life programs include a fair system that spreads the burdens of travel and holiday work among all employees.

62. Dan Seligman, *Who needs family-friendly companies?*, FORBES 72 (Jan. 11, 1999) (noting that a "sizeable number" of headlines from over six hundred articles invoking the phrase "family-friendly company" report a serious backlash against the concept.).

Similarly, a backlash also can arise if only parents, or only mothers, are granted flexible work arrangements. Refusing to grant such arrangements to fathers can, of course, lead to legal problems.⁶³ Granting such arrangements only to parents also can fuel backlash, because then an employee who needs flexibility to care for an ailing parent or partner can feel that parents are getting special treatment. It is interesting to note that in some companies, the problem is the opposite — parents perceive that the company allows flexibility unless it is for childcare. One attorney told PAR that it was easier to sneak out of the office than it was to say she had to leave to take care of a sick child.

Backlash against work/life policies can also stem from the design of a company's benefits system. If a company offers family health insurance, college tuition insurance, and help with day care, but few other benefits, the company has unwittingly designed a system that favors one group of employees — marrieds with children — over other groups of employees. The simplest solution is to offer a cafeteria plan, which allows employees to choose the types of benefits that are best for them.

Best Practice

The solution to both types of problems is to implement a set of work/life policies that is available to all employees, regardless of reason, as long as they can present a business case for how their work will get done on their proposed alternative schedule. Fannie Mae's company-wide policy is a good example of this approach; employees requesting flexible work arrangements are not asked the reason for their request, only why it would make good business sense for the company to grant the request. Deloitte, Ernst & Young, and Dupont similarly do not ask employees why they seek flexibility; they only ask whether it will work. "Managers don't try to play Solomon and say, "This person has children, so she can get this arrangement, but so-and-so cannot because she doesn't,"" says Dupont work/life consultant Rich Vintigni.⁶⁴ When employers do not consider the grounds for the request, all employees know they will be eligible for flexibility when they have a need.

A related best practice is formalizing all flexible work schedules. All employees who work flexibly in order to play golf,

63. See e.g., *Knussman v. Maryland*, 272 F.3d 655 (4th Cir. 2001) (finding the presumption that only mothers could qualify for additional paid leave as primary care givers under a Maryland law violated the Equal Protection Clause).

64. *Half of DuPont Employees Opt for Flexible Schedules*, 7 WORK/LIFE TODAY 3 (May 2003).

exercise, coach youth sports, and the like would be placed on a formal flexible work arrangement, subject to the same application procedure, evaluation, and monitoring as any employee on an alternative work arrangement. With virtually every employee included, flexible work arrangements may well lose their stigma and the employees may well gain a better understanding of and appreciation for others who work flexibly.

People aren't resentful of the part-time arrangements here because everyone knows that when their turn comes, they'll get flexibility. My wife is due to have a baby and I'm going to take a month off. Another attorney's significant other needs a kidney transplant. She will work in another city to be at his hospital. We get far more loyalty from this than if people felt they had to work more traditionally. This is a terrific group and I wouldn't want to lose any one of them.

— Male managing attorney of a litigation department

4. Part-Time Parity: The Principle of Proportionality

Charges of discrimination may be levied against those companies with a pattern of denying flexible work arrangements on the basis of race, sex, etc. Workers using flexible work arrangements must also be afforded the same opportunity for bonuses and promotion.⁶⁵

Fair and effective part-time programs require what PAR has called the *principle of proportionality*: proportional pay, benefits, and bonuses for attorneys on reduced hour arrangements.

Once flexibility is available to everyone, corporate counsel offices can expect many different types of people to use flexible work arrangements (FWAs). The General Counsel of a large legal department highlighted the many different types of people who can benefit from nonstigmatized FWAs. In his office, FWAs had been used by:

A male attorney whose father was ill for some period of time. He worked at home or down in the city where his father lived;

A paralegal whose husband was older and required her assistance. She came in early and left early and worked four days a week;

65. FLEXIBLE STAFFING PRACTICES, *supra* note 14, at 3.

A paralegal who was in school but wanted to continue to work in the legal department. He would work in the mornings and go to school at night;

A male attorney who had a bad back and wanted to avoid having to sit in the car during traffic because this aggravated his pain. He came in at 7 a.m. and left in mid-afternoon; and

A woman attorney who wanted to be home each afternoon when her adolescent and teenage children got home from school. She came in early and left mid-afternoon.

Proportional Pay.

It used to be that attorneys who worked part time in law firms and some corporate law departments were given a 'haircut,' that is, they were paid a salary that was proportionately lower than the number of hours they were working. For example, it was common for a short while for law firms to pay attorneys who worked eighty percent of a full-time schedule only sixty percent of a full-time salary.

Proportional pay, for example, eighty percent pay for eighty percent of a standard schedule, is recommended for several reasons. First, it eliminates an unfair and unnecessary penalty for part-time attorneys. Few attorneys are going to be willing to work for less money than they deserve, at least not for very long. Second, the lower salary sends a clear message to the part-time attorneys that they are not as valued as full-time attorneys. Finally, it may well leave employers vulnerable to Equal Pay Act suits if part-time attorneys, who are often female, are making less money than full-time attorneys while doing the same work.

Proportional benefits.

Benefits should be proportional for the same reasons that pay should be. In most companies in PAR's study, attorneys who have reduced their hours receive a pro-rated amount of time-related benefits (e.g., vacation time, sick leave).

Instead of an ad hoc workforce, you can get a reliable workforce that is attached to you by more than just a [salaried or hourly] relationship. [Giving benefits to part-time employees] creates loyalty among part-timers because of their ability to obtain benefits that they might not have been able to obtain or retain

otherwise. And other employees might offer to work part time rather than to quit the workforce outright.

— Jane Weizmann, senior consultant at Watson Wyatt Worldwide

With respect to financial benefits (e.g., health insurance, pension), most of the companies meet or exceed the baseline articulated by the principle of proportionality. Typically, they offer full health insurance for anyone who works in excess of a threshold number of hours. This threshold typically varies from twenty to thirty-two hours a week. At least one company offered full health insurance to all management-level employees, without any requirement that they work a minimum number of hours. It should be noted, however, that no matter how well-intentioned an employer's financial benefits plan is, most part-time attorneys will likely receive reduced pension benefits because their benefits are often determined based on their average salaries before retirement — which may well include several years of lower pay while they worked a reduced schedule.

“I was fully covered by health insurance. This was because I was already on staff with all benefits when I went part time.”

— A male in-house attorney

Attorneys who have to become independent contractors in order to reduce their hours typically lose all health, pension, vacation, and sick leave benefits as a result. The loss of benefits can work a hardship for these attorneys, and may well cause them to look for other employment. One attorney who was an independent contractor was on call for her employer at all times. In her words, “if somebody calls me in the middle of dinner, I get up and take the call.” However, she still lacked all benefits because she was not an employee: “I don't have any benefits. I don't have sick leave. I don't have vacation. I don't have stock options. I don't have a bonus. I don't have anything like that.” She would have preferred to be a part-time employee, but the company's Human Resources department told her boss that he was only allowed one “slot” for her, no matter how many hours she worked. “So if I filled a full-time slot, he was getting a part-time attorney in a full-time slot, so he was getting short changed on the amount of help he was going to get.”

Proportional Bonuses

Bonuses are an important aspect of compensation in house, sometimes making up a significant portion of an attorney's compensation, and therefore need to be proportional for the same reasons as pay. Contrary to common practice in law firms, corporate law departments often do pay proportional bonuses for part-time attorneys. For job sharers, one company pays job sharers bonuses by multiplying the applicable bonus percentage against the actual salary for the hours worked. Each job sharer is eligible for a bonus based on his or her 'band' (for one band, for example, bonuses range from a target of twenty-five percent of salary to a maximum of forty percent of salary). So if a job sharer's performance would earn her a thirty percent bonus, she gets thirty percent of what she actually earned during that year.

5. Equal Advancement Opportunity

Attorneys are deterred from using flexible work arrangements when working a non-standard schedule will limit their opportunity to advance in their careers. Some attorneys have been told expressly that they cannot be promoted unless they work a standard schedule.⁶⁶ Others have not been told directly, but nevertheless understand the limitation because no one in their departments has ever been promoted while on a flexible schedule.⁶⁷ Advancement penalties significantly undermine the effectiveness of work/life programs as retention tools, even though advancement is generally more difficult in law departments than in law firms.

"It's not as if anyone would ever say, 'Because you work only eight hours a day, we won't promote you.' But to get the opportunities to make an impact, and to take on extra projects, and do all the things that get you noticed and promoted, you need to put in extra hours."

— An associate general counsel

Companies with best practices do not remove flexibly-scheduled attorneys from the advancement track. Some companies keep flexibly-scheduled attorneys on the advancement track, but slow down the pace at which they advance. Deloitte, for example, remains committed to the continued career advancement of their

66. See *supra* Section II.C.4 (discussing stigma).

67. See FLEXIBLE STAFFING PRACTICES, *supra* note 14, at 3.

professional employees who reduce their schedules but continue to work at least sixty percent of a standard schedule. Their guidelines state that “[t]he intent of these guidelines is to allow professionals to work reduced workload schedules without affecting ultimate career potential. Promotion will depend on an individual’s performance, professional growth, and ability to handle the responsibilities of the next level, rather than the number of hours worked.” According to one Deloitte attorney, “Lawyers are still promoted when working flexible work hours. So long as they aren’t getting in at 10 a.m. and only working until 4 p.m., they are eligible for promotion. The number of hours put in is irrelevant. Quality over quantity is what matters.”

Other companies promote attorneys with flexible schedules based on criteria other than the number of hours worked. At Ernst & Young, for example, both senior leadership and the local leaders encourage promotion of effective performers and results-oriented people, regardless of their work arrangements.⁶⁸ Another company described its experience by saying that some employees on alternative work schedules had advanced and others had not; advancement was based more on the individual’s abilities than his or her schedule. Said a male supervisory attorney: “Our sister company has four out of twenty attorneys working part time and has kept them on a promotion schedule.”

Directly related to the issue of advancement is the issue of quality assignments. If attorneys who are working flexible schedules are not given high-profile, challenging work because of their schedules, it is likely they either will not develop or will not be perceived as having developed the skills, experience and relationships necessary to advance. Deloitte has a best practice of checking the composition of the teams who are working with high-profile clients to make sure that they include employees who are working non-standard schedules. Other companies have work assignments systems that ensures that employees have equal access to desirable work regardless of their work schedules.

One supervisory attorney interviewed by PAR states that making sure part-time attorneys get good quality assignments benefits the corporation and the other attorneys, not just the part-timers. One practice that helps him accomplish this is his policy that the attorney who starts a case, finishes it. This means that at times a more junior attorney or a part-time attorney does prestigious appellate work while he watches. It benefits the

68. See E-mail from Deborah K. Holmes (Oct. 28, 2003), *supra* note 17.

company — as a supervisor, he “ultimately want[s] to be developing lawyers for their career. They are a valuable resource, and no one wants them to atrophy while they are part time.”

6. Equal Job Security

PAR heard quite a few reports of instances where people on flexible work arrangements were fired first, or where all part-timers were laid off, or where all part-timers were given the choice between going full time or being fired. One female attorney with a flexible schedule said, “If there were any kind of special arrangements, people would go to that as an easy entry point. So you had to be on an extremely solid foundation to have your flextime, part time, whatever it was, and not have it end up being an easy mark.” Obviously, if lawyers perceive that flexible work arrangements lead to job vulnerability, they will be reluctant to use them. Criteria for layoffs should focus on quality of job performance and business needs rather than job schedule.

7. Measure and Reward Quality, Not Face Time

As noted in Section II.A.2, *supra*, it is more difficult to measure productivity of in-house counsel in the absence of billable hours, and face time often becomes a proxy for productivity and sometimes even for quality. A large number of companies interviewed by PAR have no formal system for evaluating the performance of their attorneys, or do not regularly conduct evaluations. A best practice is consistent implementation of an evaluation system that rewards effectiveness, judgment, and quality of work so that the amount of time spent in the office becomes less meaningful. Several companies interviewed by PAR have instituted 360-degree reviews in which clients, supervisors, colleagues, and staff evaluate the performance of each attorney. Others have more traditional review systems in which an attorney is evaluated by his or her supervisor, perhaps with some input from internal clients.

B. Implementation: Putting an Effective Program into Practice

It will be no news to most corporations that, like any other complex business initiative, an effective work/life program requires careful thought, systematic implementation, and sustained commitment on the part of management. Many general counsel recognize that they have a leg up on law firms, because they operate

in an environment where management is conceptualized as a separate and important function — unlike in many law firms, where management is considered a somewhat undignified distraction from the real business of the practice of law. Far-seeing general counsel in large companies (or even smaller ones) also recognize that they are lucky to have at their disposal sophisticated human resources departments committed to managing the company's talent pool as effectively as possible.

One general counsel interviewed by PAR says that she has no problem judging her attorneys on the quality of their work, rather than face time. She simply talk[s] to clients. People are evaluated once a year, and we make sure that we reach out to the various client areas, and we also do that on an ad hoc basis as well. It's also a very collegial company, so I'm in constant contact with the heads of the various business units. My deputies are in contact with the various department heads.

PAR has identified the following best practices for implementing an effective program.

1. Leadership from the Top

Family's important to the general counsel, so it can be important to everybody else.

— A male in-house attorney

No serious progress can be made on work/life issues without consistent support from top leadership. If the general counsel sends the message, either explicitly or implicitly, that long hours and face time are what is valued, a few people may be able to enjoy 'special deals' under the radar screen, but the business benefits available from a family-friendly work culture will be lost regardless of what the written policies say.

Proven methods of providing leadership on this issue include:

Articulate Support

Internally and externally, clearly articulate support for business-based flexibility, along with the business case, tailored to your particular corporation.

"My philosophy on hours is informed by my situation," said Sheila Kearney Davidson, the new General Counsel of New York Life, in an inaugural slide presentation. "I have a 24/7 job." Click. "I have a demanding boss." Click. The next slide, labeled "The Boss," showed a blond toddler, Davidson's son Andrew. Davidson spelled out her take on hours: nine to five, subject to "client demands, personal demands, good manners and common sense."⁶⁹

Follow Up

When Deloitte initiated a series of workshops designed to kick off its initiative, CEO Michael Cook personally monitored attendance; "Resistance was futile," said one Deloitte partner.⁷⁰

One general counsel reported following up with the human resources director if an employee leaves to stay at home, asking the director for an explanation of the employee's circumstances. An attorney told PAR about another way in which a general counsel can follow up:

"I really feel for women who are struggling and having to keep what they get a secret because they're afraid that it's going to go away if someone higher up finds out about it. And it's probably not without personal risk that I did this, but I let everybody know I'm a mother. I talk about getting my son into kindergarten, which is an odyssey."

— General Counsel of a large public company

I found that I still did not have the time I wanted with my children, and I asked if I could do full time in four days rather than five, and the general counsel was quite okay with that. In fact, he would call me every so often to remind me that the reason I came to [this company] was so I could spend time with my children, and I really wasn't supposed to be working five days.

— A former associate general counsel

69. Aman, *supra* note 19.

70. Douglas M. McCracken, *Winning the Talent War for Women: Sometimes it Takes a Revolution*, HARV. BUS. REV. (Nov.-Dec. 2000), at 159.

Model Balance

Actions communicate volumes, and a leader who demonstrates in his or her own life the department's values is making a powerful statement. Some general counsel share how they have shown balance:

We have people with young families in our department. I have three young kids, so I try to model my behavior to some extent to show our flexibility. I made almost all of the parent-teacher conferences, almost all of the concerts. We really try to encourage people to have family balance.⁷¹

I make the fact that I have children very visible to everyone in the organization. . . . I also feel a responsibility to model an alternative behavior to the younger women who, because of their 'junior' positions, feel they must say 'yes' to everything asked of them.⁷²

I have four children, so I have a fluid work life. I make it clear to my lawyers that I expect them to work hard and get their work done, but if their child has a play, they should go to it." Sara E. Moss, when she was working in house at Pitney Bowes Inc.⁷³

Incorporate Values into Business Decisions

Keeping work/life objectives in mind when making business plans and decisions will ensure that they don't sit on the backburner. General counsel can ask how proposed actions will affect work/life objectives and use objectives in evaluating employees and programs, as this company has done:

Baxter has done a very good job on the foundational aspects of establishing a set of core values, and incorporating the values into messages and processes. For example, the Shared Values are incorporated into annual performance reviews — and work/life is a component of those values. Given the continually changing environment and demands, a core set of values helps

71. *You've Hired the Best*, *supra* note 8 (quoting John B. Reid-Dodick, Reuters America Inc.).

72. Barbara D. Kiernan, *Sheila (Kearney) Davidson: Showing Others the Way*, 25 FAIRFIELD NOW 2 (Spring 2002).

73. *You've Hired the Best*, *supra* note 8 at 80.

make sure you're doing things and making decisions in the right way, as opposed to simply being reactionary.

— Director, Community Relations/ Work & Life,
Baxter International

Related to this, general counsel can ensure that existing business practices do not undermine a work/life initiative by identifying business practices that fuel inflexibility. While such practices will necessarily be different for each company, common practices include personnel budgeting on a headcount basis;⁷⁴ budgetary cutbacks without a corresponding audit to ensure that staffing levels are adequate; and failure to treat the negative effects of attrition as real business costs.

A best practice that avoids the downfalls of headcount as a budgeting system is implementation of a full-time equivalency ("FTE") budgeting system. Under an FTE system, if a full time job is replaced with two part-timers, that is one FTE rather than two bodies under the old headcount system.

Other budget issues may also make flexible work arrangements infeasible. "Rigidities in the old payroll system made it difficult to deal with a person who didn't work his or her scheduled days. The new system doesn't care which days you work, as long as it's the correct number of hours," noted one supervising attorney.

Other in house attorneys noted additional budgeting practices that posed problems. In some companies, for example, if one attorney is allowed to go part time, and the department at the end of the year has reached its performance goals with half-a-head less, then its budget for the following year is automatically cut by the increment of the part-timer's salary that was not paid out.

2. Leadership From the Middle

People go to a company because of their general impression of the place overall, but nine times out of ten, they leave because of a manager. It's how the manager treats that person that sends the signals.

— Director, Community Relations/Work & Life,
Baxter International

74. See *supra* Section II.D.3.

*In surveys we've conducted, this is what people care about more than virtually anything — that they have a manager who cares about their development, who cares about them personally, who will support them and who will help them grow. This is critical . . . We have a terrific array of tools that we must use. We as managers are evaluated on them. It's different from a law firm, and dramatically better.*⁷⁵

Leadership from the top is necessary but not sufficient. Work/life initiatives often founder at the level of middle management, with well-intentioned corporate objectives evaporating at the point of embarkation. Studies show that supervisor support is key to employees' feelings about work/life conflict. For example, one study concluded that "women whose supervisors support their efforts to integrate work and the rest of life experience lower levels of work-family conflict, and both women and men who enjoy supervisor support are less likely to quit their employers."⁷⁶

Middle management needs to understand the business reasons for flexibility, and be assured of the senior leadership's strong support for a flexibility initiative. In addition, they need training to help them identify their impact on their employee's ability to balance, and to give them the necessary tools to manage a flexible workforce. Part of this involves recognizing that, in the words of one man who has worked full time in house for over ten years, "any lawyer who has more than one case is part time. If you've got more than one case, you're part time. Period. So what's the big deal? If the part time is my kid's Brownie troop vs. a case in Puerto Rico, what's the difference? I'm still not available to attend a deposition for my case in Oregon."

One key skill that middle managers need is the ability to actively manage workloads. Failure to manage workloads directly undermines flexibility initiatives. Workload management can take many forms, including:

- ensuring that part-time attorneys have fewer assignments, and that the assignments are not disproportionately low quality;
- equally distributing assignments that require travel;
- arranging for an attorney who has worked long hours for a long period of time to get some time off;
- cross-training some attorneys to increase the flexibility of the department.

75. See *You've Hired the Best*, *supra* note 8.

76. MONIQUE VALCOUR & ROSEMARY BATT, *WORK-LIFE INTEGRATION: CHALLENGES AND ORGANIZATIONAL RESPONSES, IT'S ABOUT TIME: COUPLES AND CAREERS* 325 (Phyllis Moen ed., 2003).

A basic strategy for garnering support from middle management is ensuring that the managers' incentives are consistent with the company's work/life objectives. If top leadership launches a work/life initiative without changing the incentives that made workplaces inflexible in the first place, the initiative cannot be expected to succeed. The incentives cannot be changed on paper only. If a company is serious about a work/life (or any other HR) policy, it will make supervisors accountable for successful implementation. Some companies already do this on a company-wide basis:

- At IBM, "Our managers are held accountable for managing their talent," said Maria Ferris, manager of work/life and women's initiatives. "Clearly, work/life is a component of that."⁷⁷
- At RSM McGladrey, Inc., in Bloomington, Minnesota, the firms' top 500 managers are given an annual 360-degree performance review that includes a section on work/life, with the question, "Does he respect and encourage balance of work and personal life priorities?" Jim Mecone, who scored 97.4 on that question, notes that "You build loyalty by allowing people to live their life. I have a family and my family's first. I miss nothing. I make sure I need to be there. I expect everybody else to be there when they need to." Mecone has been rewarded financially for his success in managing and retaining talented employees.⁷⁸
- In 2001, Ernst & Young initiated a 360-degree "People Point" evaluation, which judges top managers on their success in creating quality work environment, including workplace flexibility. "When the chairman says you can't be a top rated partner with a lousy 'People Point' score, that's real," said Kerry MacPherson, a partner in New York. Partners who receive low scores, and many who receive high scores, are assigned executive coaches, so that they can improve their performance, or so that the firm can learn how to duplicate their success.⁷⁹

3. *Benchmarking*

Within Dupont's culture, we've come to understand that we measure what we value, and we value what we measure.

77. Maggie Jackson, *Managers Measured by Charges' Work-Life Accountability Programs Let Firms Calculate Progress*, BOSTON GLOBE (Feb. 2, 2003), at G1.

78. *Id.*

79. *Id.*

Therefore, to put teeth into our diversity goals, we needed to institute metrics that would hold leaders accountable.⁸⁰

The importance of benchmarking is dramatized by the following incident. When the tax department of one company instituted a new program of business-based flexibility for its tax department, initial take-up was slow. A year after the program was instituted, a manager held a 'town meeting' in which he pointed out that people who had used flexible work arrangements were actually somewhat more likely to get promoted than were people who did not. The usage rate of flexible work arrangements soared.

Other companies with strong corporate commitments to work/life issues have also engaged in extensive benchmarking:

- IBM has surveyed U.S. employees on work/life issues every five years since 1986.⁸¹
- Deloitte documented that, "In 1993, only a few hundred people were taking advantage of [flexible work arrangements at Deloitte]. . . . By 1999 more than 30 people on flexible work arrangements had made partner, and in that year, the total number of people on flexible schedules had doubled to 800." Part of this dynamic is that Deloitte was counting.⁸²
- Ernst & Young also took care to document that no significant difference exists between promotion rates for people on flexible work arrangements and people on standard work arrangements. In 1999, it reported a 130percent increase in the number of people using flexible work arrangements since 1997 as a result of its initiatives.⁸³

Large corporate counsel offices may well be able to use the resources of their corporate human resources offices to survey employees and develop measures to assess progress. For smaller offices, and as a starting point for larger ones, PAR has developed a quick and simple benchmarking test to assess whether their work/life policies are 'up to par.'

80. Charles O. Holliday Jr., Minority Corp. Counsel Assoc., *DuPont Celebrates its Employers Transforming a Science Company through Diversity*, Diversity & The Bar (Nov. 2002), available at www.mcca.com/site/data/magazine/coverstory/DuPont1102.htm.

81. See Jackson, *supra* note 77.

82. McCracken, *supra* note 70.

83. ERNST & YOUNG LLP, GETTING THINGS DONE: 1999 ANNUAL REVIEW OF INITIATIVES 3 (1999).

PAR-CC USABILITY TEST

1. *Usage rate, broken down by sex and position, of each type of flexible work arrangement*
2. *Schedule creep, or the extent to which the department honors the flexible work arrangement of an attorney*
3. *Comparative assignments of attorneys on each type of flexible work arrangement and attorneys on standard schedules*
4. *Comparative attrition rates of attorneys on each type of flexible work arrangements and attorneys on standard schedules*
5. *Comparative promotion rates of attorneys on each type of flexible work arrangements and attorneys on standard schedules*

Usage Rate

Usage rate is important because if virtually no lawyers, or no male lawyers or no senior lawyers, use flexible work arrangements, such arrangements may well be viewed as career-limiting, or a mommy track. Stigmatized policies tend to be used only by women. If men and senior attorneys of both genders use flexible work arrangements, that's a sign that the work/life program probably delivers flexibility without stigma.

Schedule Creep

PAR found that schedule creep was very common in house.⁸⁴ Because schedule creep can lead to a sense that a company has not kept its commitment to offer reduced or different hours of work, schedule creep has the potential to hurt morale. It is not difficult to keep track of hours worked for a part-time attorney, or days worked in the office for a telecommuting or compressed-workweek attorney. When more than occasional differences are found, it is a signal that change or recommitment is necessary.

Assignments

If attorneys on flexible work arrangements receive noticeably inferior work assignments, the flexible work program will not serve as an effective retention tool. Attorneys will be hesitant to use the program, and those who do use it are not likely to gain the experience and skills they need to advance, if they are relegated to unchallenging work. Comparing the assignments given to a

84. See *supra* Section II.C.4..

flexible work arrangement attorney with the assignments he or she received while working a standard schedule, and comparing the assignments given to attorneys on different types of flexible work arrangements with the assignments given to attorneys on standard schedules, will show whether the program is being undermined by poor quality assignments.

Attrition

If a corporate counsel office experiences higher rates of attrition among attorneys on flexible work arrangements than among other attorneys, this may indicate schedule creep, stigma, or other problems with the work/life program. Similarly, if attorneys on one type of flexible work arrangement have higher attrition than attorneys on another type, the problem is easier to pinpoint. Examining attrition rates and patterns will show where a company needs to focus its attention to make its program more effective.

Promotion

In-house counsel often have a less defined promotion track than do law firm lawyers. Yet PAR heard many reports of in-house attorneys being told that they would not even be considered for promotions unless they went full time. This practice contributes to the disproportionately low number of women in senior positions in house.⁸⁵ A best practice is to keep attorneys who are on flexible work arrangements on the promotion track. If they are working full-time hours, there is no need to change their progression toward a promotion. Some companies slow the progress of an attorney who has reduced his or her hours in an amount commensurate with the reduction, and other companies use criteria in addition or other than the number of hours worked (e.g., judgment, skills, quality of work, management potential) when making promotion decisions, which may ameliorate some of the negative effects of a reduced schedule.

85. Approximately thirteen percent of the general counsels at Fortune 500 companies are female. Ashby Jones, *Trying to Break Through*, CORPORATE COUNSEL (Jul. 1, 2003), available at www.law.com/jsp/cc/pubarticleCC.jsp?id=1055463668851 (13percent in 2003); Vivia Chen, *Men Still Rule in Legal Departments*, AMERICAN LAWYER (Jul. 17, 2002) (Corporate Counsel's 2002 survey found that 12.2percent of GCs in Fortune 500 were women attorneys).

4. *Publicize Alternative Work Arrangement Successes*

I was never afraid to tell people I was on an FWA, never uncomfortable about saying, "I'm not scheduled to work the day you want to meet. Can this wait until the next day?"⁸⁶

In many corporate counsel offices, flexible work arrangements consist predominantly or exclusively of situations where a valued employee, often a superstar, is allowed to telecommute or go part time.⁸⁷ At times, attorneys in this situation receive explicit instructions to keep their 'arrangement' a secret, as this attorney relates:

My boss is embarrassed about my current schedule, and thinks that she should keep it under wraps. I tried to promote the fact that I am in a job share. For example, I had a message on my voicemail that said if I was not available, the caller should try to reach my job share partner. My boss told me not to do that.

— A female job-sharing attorney in a large law department

In companies where in-house attorneys feel the need to keep flexible work arrangements secret, they are not truly accepted.

PAR found some corporations where in-house attorneys could be open about their flexible schedules, an approach that often facilitated communication with in-house clients far better than a system in which the clients were given the misimpression that their attorney was working a standard schedule. Open communication about flexible schedules, along with a system in which attorneys are accessible to clients when they need to be, is more workable for the attorney in question and ultimately yields better service for the client, as these attorneys found:

Our part-time attorneys need to train their in-house clients, for example by publicizing that they are out of the office on Fridays.

— A male general counsel

My clients know my hours. I rarely vary my schedule, so they know they can reach me or schedule meetings.

— A female part-time attorney

I am part time now, and have been for over two years. It's going extremely well. I work Tuesday through Thursday, and leave at

86. ERNST & YOUNG LLP, *Moving Ahead: Annual Review of Retention Initiatives* (Oct. 2000) at 4 (quoting Gwen M. Ryan, Director of Tax Compliance, Mid-Atlantic Area).

87. See Section III.A.3, *supra* p.x.

5:30 or 6:00 on workdays to get my kids. I have been at this company for several years. Our corporate culture promotes balance and I have never had a problem with clients understanding. I let them know my schedule and that I can be reached on my days off. Some people I have contact me through my assistant, and some I just give my home phone number. No one has ever taken advantage of that openness.

— A female part-time attorney in a large law department

A conscious effort to publicize successful schedules, and successes achieved by attorneys on flexible work arrangements, demonstrates acceptance of flexible work arrangements. In addition, it can contribute to a snowball effect where successes build on successes and lead to even greater acceptance.

5. Provide Resources for Both Lawyers and Their Supervisors

Openness about schedules has an additional, equally salutary effect: it provides resources to attorneys and their supervisors for making flexible work arrangements work. Companies operate far more efficiently if their employees and supervisors can draw on the experiences of others and do not have to reinvent the wheel each time an issue regarding flexible work arises. Employers who have thought long and hard about work/life issues do not trust to luck that individuals, or their mentors, will know how to handle the complex issues surrounding implementation of work/life policies. Instead, these employers provide resources to help employees think through their proposal for a flexible schedule, and for supervisors to evaluate such proposals.

An exciting example is Ernst & Young's database in which over six hundred employees went public (at their own option) about their flexible work arrangements. Ernst & Young created an on-line database and documented existing flexible work arrangements (FWAs), with information on what has worked and what the challenges are, along with contact information, so that employees interested in FWAs can contact employees who already are using them and discuss their experiences.⁸⁸ The database, which was created in the late 1990's, is now linked to a Flexibility Website that enables employees to focus on both formal FWAs and the day to day flexibility that people need to achieve their personal as well as their

88. Sue Shellenbarger, *Accounting Firms Battle to Be Known As Best Workplaces*, WALL ST. J., Jan. 21, 1998, at B1; *see also* Email from Deborah K. Holmes (Oct. 28, 2003), *supra* note 17.

professional goals. For example, the website helps employees develop the business case for use of flexible work arrangements, and it provides guidelines for evaluating and maintaining flexible work arrangements that meet both employee and business needs. It also helps employees think through the specifics of how the flexible work arrangement will work by asking questions such as: How much of your work is unplanned? How do you plan to meet deadlines?⁸⁹ If you are working part time, how do co-workers get in touch with you when you are not there? How will you communicate with your team or manage your staff? How will conflicts be resolved? What support do you need from the company? In addition, it provides tips and techniques that will help a virtual worker stay in touch with his/her team and help employees communicate with their clients and teams when their personal needs to take precedence.

Baxter International also provides resources online:

What Baxter has tried to do is to have enough tools and resources available to people to break down the specifics as to why a particular alternate work arrangement will or won't work. Take a look at the specific job characteristics; for example, "Is this a line job or a staff job? Is it a job that's long-term project oriented or short-term? Is this a job where, in order to get your job done, all the tools and resources are physically on site or can they be accessed remotely via phone or computer? The goal is to break down various different aspects of the job to figure out what it is that won't work about why someone can't telecommute, for example.

— Director, Community Relations/ Work & Life,
Baxter International

Baxter provides an online matrix called the "Alternate Work Arrangement Proposal Kit." The matrix identifies job characteristics (line v. staff function, long- versus short-term projects, resources on site or accessible remotely, etc.) and the personal characteristics of the employee (communication skills, ability to self organize, business travel, etc.) to help employees build a case for business-based flexibility and to help supervisors make decisions about whether to let an employee work flexibly.⁹⁰

Additional important resources include:

- The company's human resources department;
- Work/life professionals, trainers and coaches;

89. Email from Deborah K. Holmes (Oct. 28, 2003), *supra* note 17.

90. Portions of this matrix can be viewed at www.baxter.com/job_seekers/worklife/kit.html.

- Books and articles about flexible work arrangements created in other companies;
- Human resources and work/life organizations that can provide speakers and advice about flexible work arrangements.

IV. ATTITUDE OF IN-HOUSE COUNSEL TOWARD PART-TIME OUTSIDE COUNSEL

Common wisdom among managing partners of law firms is that their clients won't want to work with attorneys on part-time schedules. PAR tested this proposition, asking in-house counsel whether they have worked with attorneys who are part time and, if so, whether they had any problems with the relationship. PAR researchers also asked, more generally, whether in-house counsel had any objections to working with part-time attorneys.

Attorneys who were interviewed frequently stated that they did not know if the law firm attorneys with whom they had worked were part time. As one told PAR researchers, "I wouldn't know if my outside counsel is part time or full time. It wouldn't even cross my mind to make that any sort of criteria." Of those who were aware of having worked with a part-time outside counsel, almost all reported few or no problems.

All but a handful of the interviewees said they do not object to working with part-time law firm attorneys as a general proposition. Some noted that full-time attorneys are not available to their clients all of the time; they have other clients, travel, trials, and the like, and there is thus little difference between the availability of a full-time and a part-time attorney. Some commented as follows:

As long as there's continuity in handling the case, it doesn't matter to me whether a part-time attorney is handling it, along with another part-time attorney, as long as I could reach either one of them at any given time, and they both are up to speed on the case.

— An in-house attorney

We have used a part-time attorney at a big firm. It's an issue of accessibility or availability. I absolutely would not have problems hiring part-time outside counsel. We hire outside counsel for one of three reasons. One is specific research or expertise, in which case it doesn't matter if they are full time. The second is major litigation, in which case we need hours of people for discovery and the judgment of the lead attorneys — we pick the right person, but almost no one will be devoted to

our case 100 percent of their time so why would I care what they're doing the rest of their time — whether it is other clients' work or family. If they are not responsive, I'll be upset; it doesn't matter why. Travel schedules are what's most difficult to schedule around; if they are with their family, they are accessible. Finally, we hire outside counsel because of capacity issues. They need to deliver, but again, who cares what they're doing with other hours?

— An in-house attorney

So many attorneys work on any one project, it wouldn't matter if one were part time.

— An in-house attorney

In the context of responding to these questions, in-house attorneys often voiced accessibility and responsiveness as issues with outside counsel. They noted, however, that these issues were not limited to part-time attorneys: "What I won't like is, if I have an emergency, not being able to reach somebody. But that could be a full-time lawyer, too." Another said:

I do a lot of litigation management. And half the time, I'll call, my attorney's in court on something else. What's the difference if someone's in court, someone's in a closing. I've got another one who is a very fine attorney. He's a mediator. Sometimes I can't get him because he's in an all-day mediation. Unless someone is working exclusively for you, which is incredibly unlikely, they are working for fifty, seventy-five, one hundred other clients. Rarely can I find someone available at the moment I call unless there's something prescheduled.

A key reason in-house counsel generally support part-time work for their outside counsel is the fact that effective part-time programs cut attrition at law firms. In-house counsel repeatedly noted the negative effects of high law firm attrition, including the costs of repeatedly training and building relationships with new counsel and the loss of valuable institutional knowledge.

The reason that you get testy is that you get tired of training people.

— A male in-house attorney

With the turnover rate in the law firms and the constant re-education of people who are working on your matters, it is very frustrating.⁹¹

As a result, some companies are refusing to hire law firms with high attrition, and some, like Linda Madrid, general counsel at Carr America, consider the quality of life at a law firm when deciding whether to hire the firm:

It is frustrating when outside counsel don't provide consistent lawyers . . . [N]othing [is] worse than investing in and relying on someone, and then having that person pulled out. Or, even worse, the firm isn't treating them well enough to keep them. We have tried to look at how our outside counsel treat their young lawyers . . . including demands in terms of billing. These are all issues that we think ultimately have an impact on the services we receive.⁹²

She is not alone:

Some firms try to hide attrition. In one case, the chief partner, a trial lawyer, and two associates disappeared in an 18-month period and we were only told about one. I won't use that firm again. It's wasting my time to have to re-tell the story, what my corporation is about, what our history is.

— John J. Flood, Vice President and Associate General Counsel, NASD

Flexible hours for an outside attorney would work with coverage and support. I would support a firm, if I had a choice of a firm that had flexible hours and gave attorneys a life, I'd give them business.

— A general counsel in a high tech company

The bottom line for law firm managing partners is, therefore, that common wisdom about client opposition toward part-time work is dead wrong. Not only is there client support for part-time outside counsel, but offering a good quality of life for attorneys that leads to low attrition could actually be a boon for business.

91. Nathan, *supra* note 35 (quoting the author as the moderator of the TMP Worldwide Executive Search).

92. Cynthia Thomas Calvert, Women's Bar Association of the District of Columbia, *Focus on Doing Well, and the Opportunities Will Find You: A Profile of Linda Madrid*, RAISING THE BAR (Spring 2000), at 11.

What the clients want is to know that they can always get the service they want. What law firms sell is 24-hour access if you have a problem. The law firm can manage that issue in any number of ways, but typically, the way they do it is by not letting the person leave, never take a vacation, but work, work, work, work, work, work. And then they get burned out. Well, they could probably figure out another way to manage it, but they've never really been forced to. So when they say the clients wouldn't stand for having part-time outside counsel, it becomes a self-fulfilling prophecy. If I call my favorite law firm and I hear, 'I'm sorry, he only works three days a week,' that's not going to make me happy, unless I, the client, have been managed in such a way that I know that my favorite lawyer is really two lawyers or three lawyers and they all work together and I don't need to worry about it."

— A male managing attorney

CONCLUSION

If forced to generalize, the authors of this report would say that, on balance, in-house attorneys are finding better work/life flexibility than attorneys in law firms. Better does not mean perfect, however, and much room for improvement remains.

The clear message of this report is that in-house attorneys' ability to balance varies dramatically from corporation to corporation. While most in-house attorneys work very hard, many have options available to them that nevertheless enable them to feel more in control of their schedules. It would be a mistake, though, to ignore the fact that a number of law departments still provide little or no flexibility, or provide flexibility only in the form of paper policies that attorneys are discouraged from using. Attorneys seeking in-house positions need to investigate thoroughly the policies and culture of law departments to find good matches with their own work styles and needs.

A second message is that there is not just one way to practice law. Law can be practiced flexibly, on a reduced workload, from remote locations, or in a shared fashion, and still meet the needs of clients. In fact, strong evidence suggests that flexible work better meets the needs of clients through providing more productive and committed attorneys. Numerous wonderful examples of innovative and effective work models emerged during this study, and the authors hope these examples will be a springboard for further creative thinking about how to structure legal work.

One of PAR's aims is to stimulate dialog about work/life balance. The authors hope this report will encourage attorneys and

their employers to discuss how work can be structured to meet both business and personal needs, and they welcome your comments about this report and any effect it has on your workplace.

Please send comments to betteronbalance@pardc.org.

APPENDIX A

DELOITTE

The Problem

In the early 1990s, after twenty years of hiring more than fifty percent women and placing them in the decade-long “pipeline toward partnership,” Deloitte realized that it had a leaky pipeline: the number of women eligible for admission to the partnership was much lower than the number of men. The company’s Chairman and CEO, J. Michael Cook, took the disparate attrition rates seriously: “We’re pretty good at numbers, being an accounting organization, and the numbers here were inescapable . . . Our biggest investment as a firm is our people. You can’t employ half your population and have them leave prematurely and not have a very bad business result.”

Culture Change

In 1994, the CEO personally launched an initiative designed to focus the culture on ‘value added,’ rather than ‘hours worked,’ as part of the firm’s 1993 Initiative for the Retention and Advancement of Women. The first people working less than full-time schedules were admitted to the partnership in 1995. Now, over 1,100 people (almost four percent) participate in formal flexible work arrangements. Nearly all Deloitte employees, male and female, use informal flexibility (e.g., changing starting and ending times, leaving during the day for personal reasons, or informal telecommuting) at least occasionally, and about half use it regularly. Well over three-quarters of the employees on flexible work arrangements surveyed reported that they would have left the company if not for this flexibility. In addition to helping to increase dramatically the number of women partners, the firm has documented that the flexibility changes have saved the firm millions of dollars it otherwise would have spent on hiring and training replacements — as much as \$27 million in 2003 alone.

Range of formal flexible work arrangements. Subject to practice office needs, all employees are eligible to work some kind of a reduced schedule on a long-term basis. They receive pro-rated salary

and paid time off; if they work at least twenty hours per week, they are eligible for complete health benefits. Long-term part-time slows (but may not prevent) continued advancement; certain high-performing professionals can work reduced hours for a defined period of time without affecting their ultimate career potential. Certain high-performing professionals also can telecommute on a regular basis during fifty percent or less of the week.

These arrangements do not represent a 'mommy track' in the sense of dead end jobs with boring work: a recent survey showed that sixty percent of formal flexible work arrangement participants were satisfied with their career progress and about three-quarters felt they were offered challenging assignments that called for optimal use of their skills. However, there is still room for improvement: approximately ninety percent of the participants are women, and some do feel they are not offered appropriate promotional opportunities.

Flexibility is part of a complete package. Employees also can use one or more of the following: paid and unpaid parental leave, adoption assistance and reimbursement, a childcare resource and referral program, an elder care consultation and referral service, and backup child care, among others. Deloitte implemented its Women's Initiative very publicly in 1993, so that management in each office knew that employees and the media were watching to see if it moved forward as promised. The firm required all 5,000 management professionals to attend small group workshops, which, by making the problems caused by unexamined gender stereotypes real, made it possible to start addressing them. It holds managers responsible for ensuring that women have opportunities for key assignments, and keeps enthusiasm up by sharing success stories, both individual and statistical. For example, its website lists numerous awards for being a great place to work and posts employee profiles such as that of Katrina, a senior manager who takes off eight weeks per year to windsurf.

What About the Attorneys?

The new corporate culture extends to attorneys, over forty percent of whom are female. Attrition is very low. In the view of one attorney with whom we spoke, attorneys work hard — typically for 40 or 50 hours per week — but do not put in unnecessary 'face time.' Indeed, this attorney reported that, if someone is always in the office, others may suspect that individual is not working efficiently. While only one attorney currently is willing to accept the cut in

salary that comes with part-time work, attorneys' hours are flexible and, with their manager's permission, they can work from home when needed.

APPENDIX B

ERNST & YOUNG

The Problem

When Philip Laskawy, then Chairman and CEO of Ernst & Young (E&Y), realized that E&Y was losing employees, especially women, at all levels of the company, he was concerned. He wanted E&Y to be a global employer of choice, to retain its best and brightest, and to have a workforce that reflected the gender balance of the marketplace. According to Deborah K. Holmes, director of the Center for the New Workforce, the office he created to accomplish these goals, the “clients increasingly let us know they weren’t interested in high turnover. They want consistency in service. They want people who know their business. And since we’re in the client-service business, that means we have to listen to what our clients ask of us.”

National Flexibility Initiatives

E&Y’s national programs allow all employees to learn from one another. The flexibility website is a detailed website which includes how to lead flexibly and manage a virtual team, and tips and techniques for communicating flexibility both personally and for a team. The website also includes a toolkit for individuals to explore formal Flexible Work Arrangements (FWAs). It describes various options, the reasons for them, the skills sets required to work under them, and topics that employees and their supervisors should discuss prior to implementing a FWA. It also links to a database of profiles of hundreds of employees on FWAs. This helps make flexibility acceptable and successful: Since the database was implemented, progressively more people have chosen to work on flexible schedules — almost 2,300 out of 23,000 US employees by 2003. Employees on flexible work arrangements have been promoted at the same rate as standard schedule employees. Today, E&Y has promoted eighteen women to partner and thirty-six additional people to principal and director while working on an FWA. In addition, E&Y hired — as partners — two people on FWAs (one male, one female).

Accountability

National programs also ensure that managers are held accountable. Starting in 2001, E&Y's 360-degree People Point survey judged Partners, Principals and Directors on their efforts to promote a good work environment, including by encouraging flexibility. The ratings currently are one data element used to determine annual ratings and accordingly, compensation, and current chairman and CEO, Jim Turley, has made clear that those with below average People Point scores cannot be top rated. Executive coaches help the firm learn from high scoring managers and coach lower scoring ones. Each year since 1997, E & Y has recognized someone for their support of development and advancement of women at E&Y with the highly publicized Rosemarie Meschi award.

Local Control

E&Y also gives employees the ability to make their local workplaces more flexible. In some offices, employees need not check voice mail and e-mail on weekends and vacations. Other innovations include: encouraging more telecommuting, reimbursing employees for child care expenses when they must travel on business or work weekends, allowing casual dress every day, and providing laptops to nearly every E&Y person. Many offices have utilization committees with responsibility for monitoring workloads to ensure that work is more evenly distributed. E&Y found that some people were quitting rapidly in large part due to 'work/life' tension caused by constant travel. So the firm, for some segments of the business, developed a 3-4-5 schedule: three nights away from home, four days at the client's site, and day five working at home or in their local office. In another exciting initiative, teams explore each person's personal and professional needs at the beginning of a new project and create a team calendar to meet them

Savings

In the mid-1990s, the retention rates of women client-serving professionals were several percentage points lower than men's at various organizational levels. Reflecting the success of E&Y's initiatives focused on the retention and advancement of women, women's retention rates now exceed men's at virtually all levels.

Based on widely accepted estimates of replacement costs of 1.5 times base salary, the improved retention of women client-serving professionals yields savings to the firm of approximately \$12 million annually.

APPENDIX C

ELI LILLY

The Policy

Eli Lilly has a variety of flexible work options that are available to help employees balance work with their lives outside the office.

Employees who have been at the company for at least one year, including attorneys, can request permission to work part-time, which means they have a reduced workload and receive pro rated pay and benefits. The part-time option is limited to employees with dependent care responsibilities (PAR does not endorse such a limitation), but a wider array of flexible work options is available to all employees. Lilly allows people to work from home on both an occasional and regular basis. Like many corporations, Lilly has a flextime program under which employees must be in the office for the core hours of 9 a.m. until 3 p.m., but can flex around those hours. Recently it began offering a 'flex week' option to employees. The flex week is a compressed workweek; employees work full-time but they control when they work. For example, they might work long days on Monday through Thursday, and leave at noon each Friday.

The Implementation

Approximately ten years ago, Lilly began offering flexible work arrangements. "Lilly had always been a good place to work," Candi Lange says.

In the early 1990s, we recognized that we needed to make some changes to address the needs of the current workforce. We saw that flexibility was a real issue as family needs became more diverse, and providing flexibility allowed us to maintain our edge in recruiting, retention, productivity, and employee engagement. It also allowed us to maintain the significant investment we had made in training our employees.

Highly talented employees who would have left without them pioneered the programs. They proved that alternative work arrangements could succeed, which made it easier for others to

request them. As at all companies, some departments and some supervisors are more receptive than others to requests for flexible work arrangements, and some attorneys are better advocates for themselves than others. Lilly has a department of workforce partnering that coaches employees and their supervisors to think through the issues raised by flexible work arrangements, publicizes the success of the arrangements, and continually works to improve the arrangements, among other things.

The Lawyers

Lawyers at Lilly have shared jobs, worked part-time, and telecommuted. Attorneys have been promoted and have received merit raises while working part-time. Both men and women attorneys work part-time. They do so openly; clients and colleagues are aware of which days they are in the office and therefore generally are able to schedule around them. While avoiding schedule creep is always an issue for professionals, and the part-time attorneys do not have rigid eight-hour days, they recognize that their full-time colleagues don't either. Further, the company monitors attorney workload in an effort to avoid schedule creep. Accordingly, one supervisor told his part-time attorney that one of her objectives for the next year was to seek to maintain an appropriate workload in light of her part-time status, and they restructured her job to make this possible. Supervisors of another attorney, who was receiving additional responsibilities when her workload already required her to work more than the agreed-upon three days a week, successfully urged her to bring her official schedule in line with the actual work, so that she now is paid for four days per week.