

Effective Policies
and Programs
for Retention
and Advancement
of Women
in the Law

WorkLife Law

UC Hastings College of the Law

Best Practices

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Diversity Beyond the Body Count

For too long, diversity efforts have counted women and lawyers of color, and exhorted employers to improve the body count. The drawback of this approach is that it doesn't tell employers what is going wrong, or they should be doing differently.

The PAR Research Institute's **Beyond the Body Count Approach** highlights that effective measures to improve the retention of women need to do two things: address the hours problem and design basic business processes to control for implicit bias.

Address the Hours Problem

Only 9 percent of employed American mothers work more than 50 hours a week during the key years of career advancement – age 25 to 44.¹ So even if an employer does everything else absolutely perfectly, it is unlikely to advance a proportionate number of women without addressing the fact that most mothers do not work the schedule currently enshrined as “full time.” Offering only a single one-size-fits-all schedule not only will cause an employer to eliminate a large percentage of the pool of talented women—it also will drive away many younger men.

Control for Implicit Bias in Basic Business Systems

Research shows that subtle bias has profound effects, and continues to shape office politics in ways that systematically disadvantages women and people of color. Offering an implicit bias training can help, but it does not really address the problem. Changing minds and hearts at an individual level is fine, but the real problem is the way implicit bias is built into the basic business systems; in the law, the key ones are the assignment, evaluation and compensation systems.

The PAR Research Institute (formerly The Project for Attorney Retention) has worked for fifteen years to gather best practices to give legal employers concrete guidance. Note, however, that organizations may have changed their practice since we interviewed them. **We would love to hear about it if something has changed – or if you have a best practice to report.** You can contact us at:

<http://worklifelaw.org/about-the-center/contact/>

“Research shows that subtle bias has profound effects, and continues to shape office politics in ways that systematically disadvantages women and people of color. Offering an implicit bias training can help, but it does not really address the problem.”

¹ Calculations performed by Alison Gemmill, using the 2011 American Community Survey, which is a nationally representative survey conducted by the United States Census Bureau, <http://www.census.gov/acs/www/>.

Addressing the Hours Problem

APPOINT A BALANCED HOUR COORDINATOR

What Is A Balanced Hours Coordinator? Why Do Firms Need One?

A Balanced Hours Coordinator is a partner or administrator with a direct report to the head of the firm who is appointed by the firm to oversee the successful implementation and administration of its balanced hours program. Firms need a Balanced Hours Coordinator because even the most expertly drafted, well-intentioned balanced hours policy cannot implement itself. A mere paper policy is essentially worthless or, worse yet, it can be damaging—damaging to the careers of the attorneys who opt to take advantage of it without appropriate guidance and institutional support, and damaging to management's credibility as it creates false expectations and erodes associates' morale. By adopting a balanced hours program and appointing a Balanced Hours Coordinator to keep a balanced hours program on track, to troubleshoot problems as they arise, and to guide balanced hours and supervising attorneys, firms can ensure that their policy will succeed in practice.

Functions of a Balanced Hours Coordinator:

- Collect and provide information about balanced hours at the firm
- Help attorneys and the firm create balanced hour proposals
- Monitor schedule creep and assignments
- Address excessive hours with supervising attorneys
- Advocate for and support balanced hours attorneys
- Provide training about the program initially for the firm as a whole and thereafter for new attorneys

Check out the real-world examples of balanced hour coordinators below. Does your firm have a balanced hour coordinator? Is it planning to appoint one? Let us know your experiences, thoughts, and questions.

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**Q&A with Roslyn Pitts, Balanced Hour
Coordinator, Kirkpatrick Lockhart**

Q: Do you know why the firm created your position?

A: Experts in the field have identified infrastructure as an essential element of programs like ours. K&LNG created the balanced hours coordinator position to serve as a crucial part of that infrastructure here—to implement, support, and manage the balanced hours program. Administratively, the program has many moving parts, so it's very important to have one person dedicated exclusively to the role.

Q: What do you think are the advantages and/or disadvantages of creating your position as an administrative one, as opposed to putting a partner in that role?

A: I am not certain that the firm set out to create an administrative position. However, because this role is administratively intense, a practicing lawyer simply would not have the time to invest. I do not see any disadvantages to my being a law firm administrator. I have a direct line of communication to Peter Kalis, chairman and managing partner of our firm. I practiced law and can relate to the pressures and life demands experienced by our lawyers. We designed our administrative process to include local partner input and decision-making. We expect that our proposing BH lawyers may feel more comfortable speaking candidly with an administrator who has no influence over their work assignments, compensation, bonus, evaluations, etc.

Q: Could you state your job description in a nutshell?

A: To implement, manage and assist in any way with the balanced hours program; to listen to, coach, counsel and advise lawyers participating in or interested in participating in the program; and to do whatever necessary to contribute to the success of the program from our lawyers,' the firm's and clients' perspectives.

Q: What do you see as your most important function?

A: To support, counsel and coach our BH lawyers.

Q: Why?

A: It is crucial to the success of the program for us to understand the needs of our BH lawyers and to make sure those needs are guiding the process of helping them through difficult times, addressing their issues and adjusting their hours arrangements when necessary. The legal industry is very demanding, and lawyers who participate in the BH Program will continue to be pulled in

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many directions. It will take a great deal of support to help them manage the competing responsibilities while maintaining their approved arrangements.

Q: How do you define "coaching"? What do you see going into that?

A: It depends on the stage of the process the BH lawyer is in. For example, before submitting a BH proposal, the coaching would be discussing the lawyer's existing needs, identifying how best to address such needs and creating options that may assist the lawyer in reaching his/her personal and professional goals. After the BH proposal is approved, the coaching would change to assisting the BH lawyers with issues, stresses and concerns that arise during their day-to-day lives.

Q: Would you act as a go-between if there was a supervising attorney who was experiencing difficulty with a balanced hours attorney or on behalf of the balanced hours attorney appeal to the supervising attorney if things weren't working?

A: Yes.

Q: Who ultimately makes the decision to approve a balanced hours proposal?

A: The administrative partner of the [local] office, where the proposing BH Lawyer resides, approves the BH proposal. For example, if the balanced hours lawyer works in our New York office, the New York administrative partner approves the BH proposal.

Q: What do you think is the most difficult aspect of your position? A: Perhaps the most difficult aspect of the position is managing the expectations of the supervising partners and the BH lawyers. The reality is that the legal industry is based on client demands and billable hours, both of which are expectations that need to be met and neither of which are particularly conducive to flexibility. We are committed to working with this reality so that all approved BH arrangements and indeed, this program, are successful.

Q: What do you think will be the easiest or the best aspect about your job?

A: The best aspect of this role is the potential to make a positive impact on the lives of some of our lawyers. Integrating our personal and professional lives is very important and equally as challenging. I struggled with the balance when I practiced law, and ultimately chose to "opt out" of the practice. I hope to help our lawyers through the challenging times. My goal is to ultimately lead our firm (and perhaps the legal industry) to view flexibility as not only acceptable but also as the norm.

Q: How do you plan to go about solving the typical problems that affect many part-time programs-"the creep," or not enough work, or not the quality or level of work that one would like?

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A: We plan to carefully monitor utilization, workloads, work assignments and skill levels/development and, when necessary, to modify BH arrangements to address the needs of the BH lawyer, the firm and our clients. We will encourage communication among BH lawyers and supervising partners; strategic planning and creative problem solving when issues arise; and adaptation to changing circumstances when necessary. I will make every effort to develop personal relationships with each BH lawyer, to contact them regularly and to encourage them to keep me informed of their progress and to come to me with any issues, concerns or problems as soon as one arises.

Q: What would be the best advice that you could give to law firms that are struggling with this issue?

A: Recognize that you need to be aware of the personal and professional roles and responsibilities of your lawyers and develop programs designed to have the best chance of success in your culture. Flexibility, management support, program infrastructure and daily partner involvement with lawyers participating in the program are the keys to successful programs.

MAKE BALANCED HOURS AVAILABLE TO ALL ATTORNEYS

Making balanced hours available to all attorneys is a best practice that prevents several common problems traditionally faced by part-time programs.

In the past, it was common for law firms to limit part-time schedules to mothers of young children. This created resentment among other attorneys who might want to work fewer hours for reasons other than childcare, and did nothing to retain these attorneys. It also put firm administrators in the awkward position of having to pass judgment on the legitimacy of the reasons for which part-time was requested, and helped to maintain a “mommy track.” To the extent that the practice resulted in the denial of flexible leaves for men who wanted to take care of their children, it also left the firms vulnerable to claims of sex discrimination.

Forward-thinking corporations, such as Fannie Mae, Ernst and Young, and Deloitte and Touche, stopped asking their employees why they wanted a flexible or reduced schedule more than a decade ago. They realized that if retaining good employees is the name of the game, it doesn’t matter why they want to work a different schedule — all that matters is whether the schedule the employees propose will allow the company to retain them while at the same time getting the necessary work done.

Since The PAR Research Institute’s Balanced Hours report came out in 2000 recommending “universal availability” of balanced hours schedules, an increasing number of law firms have made flexible schedules available to all

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attorneys. A majority of the largest firms now permit attorneys to reduce their hours without regard to the reason, and The PAR Research Institute has heard numerous stories of attorneys working fewer hours so they can pursue interests outside of the office such as athletic training, political campaigns, writing, religious activities, and volunteer service.

One concern with universal availability that law firms sometimes voice is the fear that universal availability will “open the floodgates” and everyone will want to work part-time. It is entirely possible that more attorneys will use balanced hours programs if they are available, but if the alternative is having those attorneys leave the firm, the trade-off works in the firm's favor. It is unlikely, however, that all attorneys will want to reduce their hours. A number of law firms have good reduced hours programs — firms such as Dickstein Shapiro and Hogan and Hartson -- and while their programs have healthy usage rates, they have not experienced a flood of requests for reduced hours. Why not? Several reasons: attorneys tend to be type A personalities who thrive on hard work and success, attorneys have different personal needs at different times in their careers and not everyone will want reduced hours at the same time, and not all attorneys want to trade money for time.

So, the right question next time an attorney asks for a reduced hours schedule is not “why do you need it?” but rather “how can we make it work?”

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Cathy Hoffman, Part-Time Advisor, Arnold & Porter

In 2001, Arnold & Porter (“A&P”) appointed Cathy Hoffman, a partner who works an 80% schedule in the firm’s D.C. office, as the firm’s Part-Time Advisor. According to Ms. Hoffman, firm management determined “that it would be great to have someone attorneys could speak with confidentially about the ins and outs of the arrangement.” Ms. Hoffman, who is a litigator with an expertise in antitrust law, began working part-time after her first child was born, three years after she became a partner.

Ms. Hoffman dispelled the belief that going part-time will ruin one’s career in *Balancing Act*, a cover story in the September/October 2003 issue of *Diversity & the Bar Magazine*. As she explained to that interviewer as well as to The PAR Research Institute, A&P has accommodated part-timers since the 1960s and 1970s when Brooklyn Born—then an associate with two children—pioneered working part-time as an attorney. Born later became a partner and served not only on the firm’s policy committee, but also as the head of A&P’s derivatives practices. According to Hoffman, Born “set a precedent that it is possible for attorneys to work part-time and still be productive” and “[a]s a result, there’s now a general acceptance by management and the firm’s attorneys of part-time arrangements.”

ADHERE TO THE PRINCIPLE OF PROPORTIONALITY

Proportionality is fundamental to a balanced hours program's success, particularly in these key areas: salary, bonuses, benefits, and advancement. If the principle of proportionality is not followed - for example, if all benefits are denied to an attorney who reduces his or her hours - the balanced hours program creates disincentives for its use. In addition to the financial penalties, it produces a sense of unfairness and second-class citizenship. If the program isn't attractive to attorneys who do not want to work long hours, their choice will be, of course, to leave the firm. In response to these issues, some law firms are now providing more-than-proportional compensation and advancement, and "proportional" should therefore be viewed as a minimum position.

Salary

Proportional pay for proportional work is an essential component of a successful balanced hours program. In other words, working an 80% schedule should result in an 80% paycheck. Giving balanced hours employees a "haircut" by paying them, for example, 60% of a full-time salary for 80% of the full-time hours, will undermine a balanced hours program, and may even create claims under the Equal Pay Act (EPA) and Title VII. For example, in *Lovell v. BBNT Solutions*, 295 F. Supp. 2d 611 (E.D. Va. 2003), a federal district court in Virginia held that paying a woman chemist who worked a 75% schedule a lower effective pay rate than a full-time male chemist, for substantially the same work, violated the EPA; part-time status alone could not justify a lower rate of pay.

Bonuses

Bonuses should also be at least proportional. It is a best practice to reward desirable behavior, whether in a balanced hours program or any other program, and bonuses can be used to encourage business development, firm service, professional development, and the like. In recognition of this, many firms pay bonuses that are based on factors other than or in addition to the number of hours billed. Under such bonus plans, balanced hours attorneys should receive full bonuses for meeting established non-hours-based criteria, and proportional bonuses for hours-based criteria. Note: when balanced hours attorneys have worked more hours than their agreements with their firms call for, some firms recognize the additional work through a bonus. While it is good to compensate the attorneys for their additional time, a better practice is to prevent the schedule creep in the first place or to give the attorneys time off to compensate them for the extra time worked.

Benefits

This same principle of proportionality applies to benefits programs, including health care and leave. An increasing number of firms provide full benefits to balanced hours attorneys, as reflected in *The Scoop*. Firms should review their

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insurance policies to see whether their providers have established a minimum number of hours an employee must work to be eligible for coverage (often 20-25 hours). This minimum may be met by counting all work done by the attorney, including non-billable.

Advancement

Advancement opportunities, too, should be at least proportional. For example, at a firm with an eight-year track to partnership, an associate who works full-time for four years and then moves to an 80% schedule should be considered for partnership after nine years. An increasing number of firms keep attorneys "on track" to be eligible for partnership with their classes if they work an 80% - 90% schedule. Firms may look not just to hours worked to determine partnership eligibility, but also to factors such as skills, knowledge, professional maturity, judgment, and business development potential. All of these may be as important as the number of hours put in over the years.

BUILD AN EFFECTIVE IMPLEMENTATION PLAN

Many firms will say, "we have a reduced hours policy, but it doesn't work,"- that is, it hasn't stemmed attrition or improved recruiting, morale, and client service. The most likely problem is that the policy has not been effectively implemented. A policy is destined to gather dust on a shelf unless a carefully considered implementation plan and infrastructure have been created to support it. Here are some key steps to take to implement a balanced hours program.

Articulate the Business Benefits

Support for the program comes from the recognition of the business benefits firms can expect to realize from it. Every attorney should be able to articulate why the firm needs a balanced hours program. To build a strong base for the business case, gather data and statistics about the firm's current position, including recent attrition statistics, recruiting efforts and results, attrition and hiring expenses, the diversity of the firm's attorneys (particularly partners), expressions from associates about the importance of balance, and expressions from clients about attrition.

Key Players are Crucial

Identify the key players at your firm, and get them on board early. No new program can work effectively without the support of those who have the most power and influence. Setting the tone from the top down is critical to reducing resistance to change, and your key players will be the primary communicators of the changes to come. Key players are likely to include managing partners, executive committee members, significant rainmakers, and partners with a proven ability to influence the actions of the firm. Don't ignore counsel or associates who might also be key players in this area, especially if they have been advocating for changes at the firm. Getting key players on board means getting them to understand the business case for a balanced hours program, and enlisting them as advocates.

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Create an Implementation Team

Create an implementation team with a clear mission and establish a clear plan of action early. The team may include key players, but is also likely to include practice group heads, human resources, and senior associates. While commitment from the top is critical, buy-in to implementation is best achieved with a team representing a cross-section of the firm. Work with the team to establish a strategy and an action plan for implementation.

Create an Action Plan

A course of action should include:

- Communicating the business reasons for the balanced hours program to the entire firm (such as in firm meetings or memoranda from the management committee, as well as in every day conversations);
- Appointing a balanced hours coordinator;
- Developing a schedule for roll-out of the program, including revision and distribution of the policy, revision of policies that will be affected by the new program (such as advancement, compensation), training, and an effective date
- Training for all attorneys about the program;
- Anticipating and addressing resistance;
- Measuring progress and revising strategies as necessary;
- Communicating successes to help the program become part of the firm's culture.

ADOPT A WRITTEN POLICY

A key component of a balanced hours program is a written policy. To create a policy that will be uniquely effective at your particular firm, reflect on your firm's business objectives and its culture. Make sure the policy is specific enough to be useful, but also allows for flexibility in order to meet the needs of individual attorneys and staff.

Two fundamental principles to keep in mind while drafting the policy are proportionality and flexibility. Proportionality means not only pay, benefits, and bonuses need to be kept in proportion based on hours worked, but also that billable hour requirements, assignments, and advancement must be proportionate. Flexibility is necessary to accommodate individual needs. For example, only allowing for four-day weeks in your policy would not address the needs of those desiring a five-day week with fewer hours per day.

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A written policy should include the following key elements:

- Definition of balanced hours, including eligibility and duration.
- The process for requesting a balanced hours schedule.
- Guidelines for employees and their supervisors on creating a balanced hours schedule, including non-billable work and how emergency situations requiring extra hours will be addressed
- Provisions for compensation, benefits, and advancement.
- A requirement for an individualized written agreement between the employee and the firm.
- A mechanism for periodic review of schedules.
- Training for supervisors and employees.

DEVELOP INDIVIDUALIZED SCHEDULES

A universally available policy cannot be one-size-fits-all, but rather must provide enough flexibility to fit specific individual situations. Flexibility applies not only to the total number of hours worked, but also to when and where work can be done.

Law firms that have implemented balanced hours programs have allowed for a variety of successful arrangements, including, but not limited to:

- Fewer hours each day, with regular beginning and end times.
- Fewer hours each week, with flexible hours in the office.
- Fewer hours each year (e.g., litigators may take time off after working long hours for weeks while on trial; corporate attorneys may take time off between deals).

The duration that an attorney may work a balanced hours arrangement should not be artificially limited by time frames such as one year or five years, but rather should allow schedules to evolve as an attorney's personal needs and professional goals change. Some attorneys may wish to work a balanced hours schedule indefinitely, while others would prefer to work fewer hours for a few months. Still others may want to work a reduced schedule for a few years, and a different flexible schedule in later years according to their family needs. Allowing employees to move between balanced hours arrangements and to and from standard hours schedules without fear of repercussion allows the firm and the employee to maximize the retention benefits that balanced hours programs offer and to provide more workable and realistic individual arrangements.

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Work expectations should be kept in line with both hours worked and when they are worked. If an attorney is working fewer hours, they should be doing proportionally less work. The goal is to have a policy that encourages discussion between attorneys and supervisors about feasible workloads, expectations, and effective scheduling, and supports the mutually agreed upon arrangement.

CHECK FOR ASSIGNMENT DISPARITY

If you're familiar with The PAR Research Institute's research, you know that a major penalty for attorneys who reduce their hours is the loss of good assignments. The PAR Research Institute has heard reports of attorneys being passed over for challenging and interesting assignments, being relegated to document reviews, and even being told to change their practice areas to do more rote work. The PAR Research Institute has also heard that getting the dog work of the firm causes frustration and a sense of second-class citizenship for the reduced-hours attorneys, and is a factor in their decisions whether to stay with the firm.

Sometimes the loss of good assignments happens because partners assume, with good intentions, that attorneys who reduce their hours don't want to work on matters that might involve short deadlines or travel. Sometimes the loss happens because partners tend to grab whichever attorneys are closest when an assignment becomes available - and attorneys who aren't in the office as often don't have as much of an opportunity to be grabbed. Additional reasons are that some partners won't work with attorneys who work less than full-time on the often untested and mistaken assumption that the attorneys will be unreliable, and some partners refuse to work with such attorneys in a conscious attempt to make reduced hours schedules unpalatable by demonstrating that negative consequences attach to the schedule.

Whatever the reason, it hurts law firms in the long run when reduced-hours attorneys don't get a proportionate share of desirable assignments. The attorneys won't get the experience they need for their professional development, and the firms' human capital assets won't be enhanced. The attorneys are more likely to leave their firms, thereby driving up attrition costs and weakening client relationships. The reduced-hours program gets undermined so it is no longer an effective recruiting and retention tool.

“Sometimes the loss of good assignments happens because partners assume, with good intentions, that attorneys who reduce their hours don't want to work on matters that might involve short deadlines or travel.”

Some firms have changed their assignment systems in response to The PAR Research Institute's research and in response to research that shows that "free market" or "hey you" assignment systems disadvantage women attorneys. They have implemented a more centralized assignment system that evens out workloads, increases opportunities for different attorneys to work with each other, and strives for fairness in access to desirable work.

How can you know if your assignment system is fair? Check for Assignment Disparity. Look at who is working for the firm's biggest clients, who is working on the highest profile matters, and who is working with the firm's most influential partners. Take a bit of a historical look as well, checking billing records for the past couple of years. If the same type of attorneys are always getting the best assignments - such as attorneys who work full-time, whites or males - that is a red flag telling you that a better assignment system is necessary. Your firm and your clients will be best served if every team of attorneys includes women, minorities, and attorneys on reduced schedules.

Deloitte & Touche and Ernst & Young have both used this type of assignment checking system for years. Does your firm have a similar system? How is it working? Send us an email.

One Balanced Hours Attorney's Story

The challenge did not seem too daunting: take instructions from the client at 5:25 p.m. and e-mail the revised document to him by 9:00 the following morning, along with a comparison showing the changes from the previous version. If I hadn't had to leave the office by 5:30 p.m., I would probably have marked up the document by hand and given it to word processing to incorporate the changes. My preference would have been to deal with it by the same method from home. However, at that time I could not afford a fax machine and the firm would not provide one. So I put the document on my laptop and made the changes in the document myself later that evening.

My problems started when I tried to connect to the firm's network. It took me several attempts to make the connection. Every time I instructed the computer to run a comparison of the revised and original documents, it froze and I had to reboot and start the connection process all over again. Eventually, I managed to [get the document] to the client.

If I had undertaken the same task in the office, I estimate it would have taken me about 25 minutes to revise the document, run the comparison and send the e-mail to the client. Working from home, it took over two hours and a huge amount of frustration to achieve the same result.

— Associate at a Washington, D.C. law firm.

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PROVIDE TECH SUPPORT WITH THAT TECHNOLOGY

Making balanced hours programs effective often involves encouraging attorneys to use technology to work more efficiently. All too often, however, technology can create frustration and major inefficiencies, as demonstrated by the situation recounted below.

Useful tools for balanced hours attorneys may include:

- Cell phones and cell service
- BlackBerries or similar hand-held email devices.
- Laptops, tablets or hand-held general-purpose computers
- Fax machines.
- Second phone lines.
- Internet service.
- Virtual Private Networks for secure remote access

Each attorney's situation is likely to be unique, and some firms therefore provide attorneys with a yearly stipend for purchasing technology rather than a "standard issue" set of devices. While laudable, this practice needs to be balanced against the IT costs of providing technical support for many different devices and brands. A middle-of-the-road approach is to offer attorneys a stipend and a standard set of options for spending their stipends.

Spending money on technical support services provides cost-effective benefits: why have balanced-hours attorneys wasting valuable time on non-billable activities when a trained IT person can solve problems more quickly and free the attorneys up to do client work? An investment in making technical support available can reduce stress and increase productivity when attorneys and staff are working in non-traditional ways.

Depending on the firm's size, an in-house information technology support department may be able to provide on-call services and technical support. Alternatively, and especially if the firm does not provide standardized equipment, it may be best to contract with an outside vendor who may be more available to an off-site employee. In addition to IT support, proper training in technology, either by in-house staff, contracted trainers, or in local classrooms will increase the efficient use of technology and decrease technical support costs.

“An investment in making technical support available can reduce stress and increase productivity when attorneys and staff are working in non-traditional ways.”

HOLD PARTNERS ACCOUNTABLE FOR RETENTION & ATTRITION

If an inflexible workplace hurts the bottom line, it follows that managers who fail to implement effective work/life initiatives hurt profitability. And managers who hurt profitability typically feel it in their compensation.

This is the thinking behind the best practice of holding practice group leaders accountable if they fail to stem uncontrolled attrition due to their failure to implement work/life programs in an effective way. Many companies — including Deloitte & Touche, Ernst & Young, BP p.l.c., Chubb Corporation, and Safeway—hold managers accountable for failure to implement diversity measures effectively.

One increasingly common mechanism is linking managers' compensation to their ability to meet the organization's diversity goals.

- At BP, executives are rated on their success in achieving goals related to diversity and inclusion as well as on other dimensions of performance; diversity ratings directly impact their bonus pay. At Chubb, an employee's ability to meet specific diversity goals affects merit increases as well as bonuses. Chubb's senior managers must set goals for developing and promoting diverse candidates, and are required to report their results to the CEO and Board of Directors. At Safeway, a supervisor's success in meeting the company's diversity goals is a criterion for advancement and compensation.
- At Ernst & Young, partners are rated on four different parameters of success: People, Quality, Markets, and Operational Excellence. Most of the parameters are self-explanatory; the role that the "People" parameter plays at E&Y is not. The rating a partner receives for the year in the People component reflects his or her effectiveness at leading and managing people. Among other criteria, this includes the ability to retain the firm's talent by creating a flexible work environment, as well as the ability to retain women and minorities. So that rewards match rhetoric, the business-critical nature of effectively leading people is reinforced by ensuring that a partner's total score (which determines compensation) cannot be more than one point higher than the score received for People - regardless of the amount of business an individual partner has brought in. Ultimate message: Bringing in work without being able to keep talented people on board does neither the client nor the firm any good.

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- Retention of women and minority attorneys positively impacts the bottom line at law firms too. The PAR Research Institute has documented the steep costs of "churn and burn" attrition of talented lawyers: losing a single associate can cost a law firm between \$200,000 and \$500,000. Additionally, increased retention solidifies client relationships and improves the quality of the legal representation the firm is able to provide, both of which are essential to the firm's long-term health.

The PAR Research Institute understands that as part of some law firms' diversity initiatives, some firms have implemented formal mechanisms to hold individual and managerial partners financially accountable for their roles in retaining and advancing women (and minority) attorneys. Whether it's by dangling a carrot or wielding a stick, these firms often provide financial incentives to partners to go the extra mile to attract, retain and advance women (and minority) attorneys.

Does your law firm hold partners financially accountable for the retention and advancement of women attorneys, or for the success of the firm's balanced hours program? Send us an email and let us know.

Sidley Austin LLP

At Sidley Austin LLP, a partner's compensation is linked in part to his or her efforts to advance and retain women and minority attorneys at the firm. The PAR Research Institute discussed the firm's partnership evaluation and compensation processes with María Meléndez, New York Chair of the firm's Diversity Committee, and Kathleen Roach, Chair of the firm's Committee on the Retention and Promotion of Women.

Every year the firm's Management Committee meets to determine individual partnership compensation adjustments for the following year based on information provided in partner self-evaluations and personal interviews. As part of the annual process, each partner completes a self-evaluation. Of the dozen or so questions contained in the self-evaluation, two in particular highlight a partner's efforts to retain and advance women (and minority) attorneys at the firm. One question specifically requests the partner to provide detailed information about the partner's efforts throughout the year to advance women and diverse lawyers. Another question-asking what the partner has done to "push down" work-provides another opportunity to focus attention on efforts to create opportunities for women and diverse attorneys at the firm, and to reward partners who mentor more junior women and minority attorneys.

According to Ms. Meléndez, "Every single partner must account for what they've done in these areas," first in the written self-evaluation, and then

"Retention of women and minority attorneys positively impacts the bottom line at law firms too."

(cont.) Sidley Austin LLP

in the face-to-face interviews with the Management Committee. During the interview, answers to the self-evaluation questions are reviewed and discussed to afford the Management Committee the opportunity to question partners further and to hear directly from them about their efforts. At the end of the process, the Management Committee meets and determines individual partner's compensation based upon the information provided in the evaluations and interviews.

When asked how much weight these particular factors are given in compensation decisions, Ms. Roach replied that Sidley's approach is "not a formula-based compensation system." Instead, the process "takes into account all factors." "What's important," she says, is that Sidley's process "specifically identifies each partner's individual efforts to recruit, retain, and mentor women and diverse attorneys an important factor" in compensation. The fact that the evaluation form requires the partners to detail efforts to advance women highlights and "formally identifies this as one of the criteria [the Management Committee] will use to decide" compensation. Is it working? Yes, as part of a larger initiative. Ms. Roach and Ms. Meléndez note that the Firm's evaluation process was implemented five years ago when Sidley also made other changes to increase the retention of women and diverse attorneys. Ms. Meléndez and Ms. Roach believe that all of these programs together are responsible for Sidley's excellent track record of attorney retention and advancement including that Sidley has closed the gender-gap in the Firm's attrition rate-that is, it's attrition rate for men and women across all of their U.S. offices is essentially the same, a fact of which they are "very proud." In addition, in 2007, 29% of lawyers promoted to partner at Sidley were women, and one third of all Firm committee chairs are women.

“Corporate counsel and government attorneys are already successfully job sharing, and law firms have begun to try it out.”

JOB SHARE
What is Job Sharing? Can Law Firms Do it?

Job sharing is a work arrangement that allows two attorneys to share a single position. Corporate counsel and government attorneys are already successfully job sharing, and law firms have begun to try it out. According to the findings from the 2005 NALP Workplace Questionnaire, 1.6% of private law firms surveyed allow job-sharing and another 18.4% allow it on a case-by-case basis. In total, 127 law firms of 637 offices surveyed allow job-sharing on an affirmative or case-by-case basis. In a job sharing arrangement, two attorneys share the responsibilities of one full-time position, each earning pro-rated salary and receiving full or pro-rated benefits. There are two basic job share models: the twins model and the islands model. Attorneys who use the twins model essentially share everything - clients,

and responsibilities - but work on different days of the week. This model requires a high level of communication between the attorneys, but provides the benefits of consistent client coverage, two heads thinking about a legal matter for the price of one, and coverage during vacation and other leave.

In contrast, the islands model requires little reliance on the job sharing partner, as both attorneys handle their own separate caseloads, in essentially two separate jobs. The islands model provides flexibility within a law department to cover different types of practice areas that may not justify a full-time attorney, and also can be structured to assure coverage during vacation.

Which model is used will depend largely on the type of practice and the specific client needs. Some clients may prefer to rely on one attorney only, even if that means not being able to interact with that attorney every day of the week.

Other clients may prefer to work with two attorneys, knowing one of them is always available at the office.

Attorneys who job share report a high level of satisfaction. Unlike part-time attorneys, they are not bothered at home when a problem arises on their day off. The collaborative aspects of job sharing are also often appealing.

Job sharing is one reduced schedule solution that may be particularly effective in smaller law firms. Like many law departments, small law firms often have limited financial resources and workload pressures that limit the availability of part-time options. In these smaller, more intimate environments where a high level of communication among attorneys probably exists naturally, job sharing can provide a viable and cost-effective solution to the attorneys' needs for balance without compromising the workload needs and finances of the firm.

According to Linda Marks, Director of Special Projects for the Center for WorkLife Law and co-author with Karyn Feiden of *Negotiating time: New Scheduling Options in the Legal Profession*, successful job sharing requires both a team that can work well together and a supportive employer. She emphasizes the essential three C's of a job sharing partner: compatibility, communication and cooperation. Marks also suggests that potential job sharers develop a written proposal so both attorneys can clarify their ideas about how the job will be shared and can present a clear and strong proposal to firm management.

There are few costs associated with job sharing, mainly benefits if both job share partners have full benefits and malpractice insurance. The benefits and savings attributable to job sharing can far outweigh the costs, however. Job sharing can

“Attorneys who job share report a high level of satisfaction. Unlike part-time attorneys, they are not bothered at home when a problem arises on their day off.”

greatly reduce the high costs of attrition, and that alone recoups any cost. In addition, reduced absenteeism and increased efficiency result when job sharers do not use their work time to attend to their personal affairs. In *Negotiating Time*, Marks provides a chart and full discussion of the cost analysis of job shared positions.

An In-House Attorney:

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.

“In these smaller, more intimate environments where a high level of communication among attorneys probably exists naturally, job sharing can provide a viable and cost-effective solution to the attorneys' needs for balance without compromising the workload needs and finances of the firm.”

RESPECT PERSONAL TIME: CURB EMAIL USE ON WEEKENDS

It's a 24/7 world, where we have smart phones and instant access to everyone and everything at our fingertips. Not so long ago you had to be in your office to do work — no longer. With this new freedom to work anywhere at anytime, attorneys are under more pressure than ever to be accessible and responsive round the clock. How do you distinguish between an e-mail that can wait until Monday from one that requires your immediate attention in the middle of a dinner out on Friday night?

What would you think if you received the following message when you logged in for weekend work?

IT'S THE WEEKEND

Help reduce weekend mail overload for both you and your colleagues by working off-line in a replica of your mailbox.

Firm research has shown if you send a note, recipients will feel compelled to respond so, if actions/responses can wait until the next business day, change your work location to your Remote/Disconnected setting. This will hold your outbound mail until you change your work location back to In Office.

This is the message professionals at PriceWaterhouseCoopers (now PwC) see the first time they log in on the weekend — a gentle reminder that it is the weekend and that they should be respectful of their colleagues' personal time. It reminds the person logging in that although they may not expect colleagues to respond immediately, the recipients of their e-mails may feel compelled to reply immediately. If an email can wait, PriceWaterhouseCoopers urges employees to work offline so that e-mails will not be sent until the workweek resumes on Monday. According to Kristin Rivera, a partner in the San Francisco office, management undertook this email program because it makes "people feel good" and because it ensures that co-workers are "not bombarded with e-mails on Monday."

Another E-mail Tip for Respecting Colleagues' Time

Cut Down on Email Clutter

Disable the "Reply to All" Option. This practice was also instituted at PwC and cut down on e-mail clutter by at least a third according to one partner. If a sender wants a group of colleagues to receive a reply e-mail, they have to physically type in all intended recipients. More often than not, replying to all is unnecessary. When this option is inconvenient, chances are the e-mails you receive actually require and deserve your personal attention.

"It's a 24/7 world, where we have smart phones and instant access to everyone and everything at our fingertips. Not so long ago you had to be in your office to do work — no longer."

projects, Of course, some emails can't wait — that's inevitable. But most can. An alternative to the PriceWaterhouseCoopers approach is to require or encourage attorneys who send e-mails over the weekend to include a deadline. If it's an emergency requiring immediate attention, so be it; if not, at least, the recipient can make an educated decision about whether or not to focus on the matter over the weekend.

Is your firm using e-mail or other technology to institute work/life balance? Send us an email.

MOVE TOWARDS MASS CAREER CUSTOMIZATION

Most organizations offer flexible work arrangements as accommodations and exceptions to the "norm" of full-time work. Yet the American workforce has changed significantly in the past generation: only 17% of today's households have a breadwinner husband and stay-at-home wife — down from 63% a few generations ago.

This means that the old-fashioned assumption that committed professionals will be available for work virtually 24/7, because they have someone else taking care of the home front is no longer realistic. Today's corporations are recognizing that this outdated model no longer fits the wants and needs of today's workforce.

Leading the way in this important paradigm shift away from the traditional lockstep ladder is the highly individualized "Mass Career Customization" (MCC) model now being pioneered by Deloitte and Touche USA LLP. Mass Career Customization is built on the assumption that talented individuals will, for a wide variety of reasons, want to change the pace of their careers several times during the course of their working lives. MCC allows professionals to tailor their careers, changing both their role and their pace - without jeopardizing their long-term career prospects.

Mass Career Customization allows all employees-in partnership with their employer-to create a customized career path. The idea, borrowing from the business approach of "mass product customization," is to approach a career path as a "lattice" rather than a "ladder," and to change from a "one-size-fits-all" to a "custom-made" approach. The model changes from a one-dimensional model with flexibility as the exception, and makes individually customized careers the norm throughout the organization.

In some ways, Deloitte's MCC model is similar to The PAR Research Institute's Balanced Hours Model, which also emphasizes creating individually tailored arrangements that meet both the law firm's business objectives and the attorney's personal and professional development needs.

The MCC model, however, is not a substitute for an effective program to control the stigma frequently associated with working alternative schedules. To Deloitte's

“...American workforce has changed significantly in the past generation: only 17% of today's households have a breadwinner husband and stay-at-home wife — down from 63% a few generations ago. This means that the old-fashioned assumption that committed.”

credit, 74% of the participants in their MCC pilot program were men — a good sign that their program is not stigmatized. Learn more about the Mass Career Customization model developed by Deloitte.

ON-RAMPING

Recently, law firms are offering attorneys returning from maternity, adoption, or caregiver leave to ramp back up into their practice. These “on-ramping” policies, which allow for a gradual return to a full-time schedule or an easy introduction to a reduced hour schedule, have become popular and well utilized. The PAR Research Institute has collected best practices in the on-ramping area:

Ramp Up Program Models with Schedules Ranging From 3 Months to One Year:

- After leave, provide automatic (upon request) 3-month graduated return on individualized schedule
- 50% of full time in the first month back
- 60% 2nd month
- 70% 3rd month
- During or after phase-in, attorney can return to full-time or propose more permanent flexible work arrangement
- 70% of previous schedule for 6-10 months after return
- Automatic “pace reduction option” for associates, scheduling reduced pace for up to 6 months without prior approval
- Flexible return where attorneys can propose their own return schedule over which they gradually progress back to work over 12 months. Includes working at home, fewer days, reduced hours, or any combination.
- Option to work reduced schedule for up to 6 months within first year following birth or adoption
- Automatic one-year part-time option for returning attorneys

Other Leave Support for Ramping Down & Ramping Up:

- Provide a “leave buddy” from the same practice area to give attorneys someone to talk with about issues and concerns.
- Offer counseling sessions with therapists trained in helping parents with family and work transitions.
- Provide a maternity leave “toolkit” with tips tailored to the individual to help them both as new mothers and to give them guidance on how to return to work.

(cont.) Other Leave Support for Ramping Down & Ramping Up:

- Have a maternity mentoring program — mother to choose one or two mentors from available pool based on her needs or help her to find appropriate mentor (e.g., new mothers, mothers of multiples, single mothers, practice area, etc.) about 2-3 months before maternity leave begins. Maternity mentors act as sounding boards and provide guidance on preparing to go on maternity leave, handling work requests and communication during leave, selecting a work arrangement upon returning, and gearing back up for work after leave.
- Send small gifts to mother/child/new dads.
- Connect each woman with a network of other women who stay in touch while the new mother is on leave, and help prepare her and the workplace for her return.
- Develop a “parental support program” to deal with the problems and issues of new parents re-entering the workplace while simultaneously caring for a new baby.
- Encourage fathers-to-be to take paternity leave; and allow on ramping for new dads.

TELECOMMUTING

Many law firms and legal departments have long offered workplace flexibility through ad hoc telecommuting. That is, attorneys, through communication with their supervisors, can work remotely from the office on an occasional basis or on a discrete project.

More recently, law firms and legal departments are offering telecommuting options as part of a regular, recurring flexible work schedule. Legal employers are finding that this flexible work option is well utilized by both men and women.

If you offer telecommuting, The PAR Research Institute recommends implementing these best practices:

Telecommuting Program/Policy:

- Available to all employees who can conceivably work remotely (reduces backlash and stigma).
- Defines “core hours” when the telecommuter is to be available.
- Provides training for supervisors.
- Provides technology and support.
- Ensures compliance with employment laws.

“...law firms and legal departments are offering telecommuting options as part of a regular, recurring flexible work schedule. Legal employers are finding that this flexible work option is well utilized by both men and women.”

Supervisors:

- Focus on productivity and results.
- Keep communication open.
- Address problems quickly.

Telecommuters:

- Have set work times and a designated workspace.
- Are accessible by phone and email when away from desk.
- Maximize use of technology.
- Set up childcare and eldercare.
- Maintain office and client relationships.
- Keep supervisors informed of status of work.

Here are some important additional practices:

- Offer the same compensation, benefits, and promotion opportunities to telecommuters as to those not telecommuting.
- Establish a consistent schedule.
- Ensure effective accessibility.

Telecommuting Successes:

By including telecommuting as part of a flexible work program, legal employers can reduce the stigma often associated with utilizing flexible work arrangements by offering an option that is widely utilized by male and female employees, parents and non-parents alike. At Accenture, where telecommuting has been an option available to all attorneys in their US legal group for over ten years, male and female employees cite their flexible work arrangements program as one of their most important benefits. Similarly, Allstate’s legal department has found that the company’s work-at-home option is the most popular flexible work option with men.

Another large legal department sends out a daily email to all employees with information about who is out of the office and who is working remotely. By including even those who are working from home on an occasional basis in this daily email, this legal department is further de-stigmatizing flexible work by highlighting that most lawyers take advantage of flexible work options.

“By including telecommuting as part of a flexible work program, legal employers can reduce the stigma often associated with utilizing flexible work arrangements by offering an option that is widely utilized by male and female employees, parents and non-parents alike.”

Compensation System

In Summer 2010, The PAR Research Institute and the Minority Corporate Counsel Association published the groundbreaking study on the impact of law firm compensation systems on women. Based on a survey of nearly 700 women lawyers, the study concluded that existing compensation systems open the door to gender bias because they contain tremendous subjectivity, lack transparency, and because so much of the negotiation surrounding salaries take place out of sight.

IMPROVE TRANSPARENCY

The path to becoming a billing partner is varied, and often there is no official guidance as to a lawyer can accomplish this goal. Sometimes it is just who gets the file open first; sometimes it is the partner with the most political clout. Said one lawyer, “We have partners who are named as billing partners for clients who never do any billable work for those clients.... There is no consistency and no one to turn to for guidance; there are no rules.” Yet this is [important] to the overall determination of partner compensation.

A system that is not clearly and formally explained to everyone means that, to gain the knowledge necessary to understand the system, one needs to rely on informal networks and relationships with people in power. This situation will disadvantage out-groups, which in most law firms means that it will disadvantage disproportionate numbers of women and people of color. Informal, opaque systems also will disadvantage many white men who are too shy or introverted to know the right people, and the ropes.

A best practice is to write a memo that explains clearly how a firm’s compensation system works, and provides for each new partner an introductory session with an existing partner-mentor to explain the system and to answer questions. Of course, the partner-mentor needs to be someone who actually understands the compensation system: as our survey indicates, many partners do not.

“The system is effectively feudal. Compensation is centralized with a very small group of partners. Because voting is weighted, the firm chair knows exactly how many votes he needs to control the firm and he pays the top tier enough to buy their loyalty. The dominant factor is origination credit, but there are virtually no rules or guidelines and so credit is a free for all, with the strongest usually winning. Sadly, the partners compete as much with each other within the firm as with those outside the firm. The women partners approached firm management five years ago and asked the firm to research best practices and do a benchmarking survey on compensation systems... These efforts were entirely rebuffed.”

“A system that is not clearly and formally explained to everyone means that, to gain the knowledge necessary to understand the system, one needs to rely on informal networks and relationships with people in power.”

When the compensation system is changed, this needs to be clearly explained. This probably will be best handled in small meetings: in large meetings, people will be reluctant to ask questions, whereas one-on-one meetings are likely to yield inconsistency in the information given.

A more basic point is that firms need to understand what factors actually play a major role in a firm's compensation—to talk about realities rather than aspirations. Gaining this information often will require a statistical analysis, to identify what factors are actually influencing compensation, as opposed to what factors are announced to have an influence. This kind of statistical analysis typically will require an outside consultant—but this is a type of analysis familiar to consultants who specialize in compensation systems.

A final point is that firms need to understand whether those factors that play an important role in elevation to partnership are different from those factors that play an important role in the setting of partner compensation. If different factors have a major influence on the setting of partner compensation than on the elevation to partnership, firms need to inform new partners of this fact. Again, making this kind of information process more formal can avoid in-group favoritism—where “those in the know” succeed, while those who are not in the know tend to fail. Allowing in-group favoritism to flourish will disadvantage not only women, but also people of color, lesbian and gay lawyers, and perhaps others.

BENCHMARKING

A first step is to establish baseline information on the percentage of revenues/profits generated by, and credited to, women lawyers, and lawyers of color. The second, and perhaps most important step is to implement regular monitoring and analysis of the impact of a given compensation system on out-groups, including women and people of color.

This type of benchmarking is important in order to control the kind of biases that occur even in organizations where good intentions abound. A recent study of a business with an elaborate performance evaluation process, and a strong commitment to merit-based compensation systems, found that women and people of color nonetheless got lower raises when supervisors took the evaluations and awarded raises, without a process to check for bias at that step of the process.

To quote a well-known phrase, what gets measured gets done. To put this differently, “If you're not keeping score, you're only practicing.” If systematic differentials in compensation by race and/or sex emerge, further steps can be initiated. Given the wide range in different types of compensation systems, probably the best advice is to call in a consultant to analyze where the problems arise, and how best to address them.

“A more basic point is that firms need to understand what factors actually play a major role in a firm's compensation—to talk about realities rather than aspirations.”

IMPROVE DIVERSITY ON COMPENSATION COMMITTEES & INTRODUCING OTHER CHECKS ON BIAS & IN-GROUP FAVORITISM

In our respondents' firms, the committees in charge of compensation were remarkably white, and remarkably male. This creates the perfect conditions for in-group favoritism that systematically disadvantages women, and people of color of both sexes. An important point is that if the relevant committee has one woman or person of color, this creates the risk of the unhealthy dynamics that surround tokenism. For example, when only one woman is on an important committee, her sex become so salient that she may feel the need to judge women more harshly to prove that she is not favoring women. Or she may feel that every time she opens her mouth her comments are taken as representing all women. A variety of dynamics can emerge. In short, heterogeneous committees can provide a break on bias.

The fact that many committees in charge of compensation are elected may contribute to those committees' lack of diversity. In this context, it is worth noting that many respondents said that—although the committee in charge of compensation, in theory, is elected—in practice the election typically rubber-stamped candidates that have already been chosen by the powers that be. One useful approach may be for the management committee to propose a diverse slate of candidates for the compensation committee (if that firm has a separate compensation committee).

A final practice that exists in some firms can help mute in-group favoritism in the operation of compensation committees: the rule that no partner's compensation can rise more than 10% while he or she is serving on the comp committee. Said Barbara Caufield, equity partner at Dewey & LeBoeuf, "We used to do this. I don't know why we ever stopped. It was very effective in ensuring that nobody stayed too long on the compensation committee!"

RE-EXAMINE THE BILLABLE HOURS THRESHOLD

Billable hours inevitably play a significant role in the level of partner compensation. Yet two different models exist for taking billable hours into account. One requires all partners to meet a certain billable-hours threshold in order to receive all the credit available for the billable-hours component of attorney compensation, on the theory that billable hours are only one type of contribution partners need to make for firms to flourish. The other system rewards the attorneys who work the most hours, signaling that billing hours is a critical contribution to a firm's long-term financial viability.

The threshold approach to billable hours was used in only a small minority

"The fact that many committees in charge of compensation are elected may contribute to those committees' lack of diversity."

of our respondents' firms. The predominant system presumably was one in which attorneys who work the longest hours tend to receive increased compensation even if, for example, a partner could be increasing a firm's profitability more by leveraging associates better, decreasing unwanted attrition among valued attorneys, or moving from lower- to higher-margin practice areas. Because many more men than women have two person careers in which they can rely on their partner to take care of all matters outside of work, a most-hours-wins systems disproportionately disadvantages women partners. In addition, in the opinion of many law firm consultants, systems focused heavily on billable hours not only are not economically justified; they introduce perverse incentives, most notably the hoarding the work and inefficiencies that are detrimental to clients' interests.

REDESIGN ORIGINATION CREDIT

Sixty percent of firms in the survey do not formally award origination credit. Yet even in firms without formal origination credit, origination often plays a central role in the setting of law firm compensation. Old-fashioned origination credit could usefully be redesigned in a number of ways:

- **Origination credit should not be inheritable.** If the purpose of origination credit is to incentivize lawyers to bring in new clients, it is hard to discern the rationale for allowing the partner who "owns" the client to pass on origination credit to whomever he or she wants. This practice has very negative effects both on diversity and on the perceived fairness of a firm's compensation system.
- **Reward teams, not individuals.** The point of a law firm is to build teams of lawyers that, together, can serve a client's interests better than a sole practitioner could. As noted above, consultants often advocate systems that recognize a variety of contributions to a given client's work. One step in this direction is the common practice of dividing credit among three or more attorneys: the one who brought in the work, the billing partner, the partner who manages the client relationship, and the partners who actually do the work. Obviously, if the weight given to origination credit swamps the other factors considered, the resulting system will differ little from old-fashioned origination credit. Another alternative is to shift away from origination credit, towards an analysis of whose work currently binds a given client to the firm. Less than one in five majority equity partners and only roughly one in six income- and minority equity partners reported this kind of system when asked what factors were considered "very important" in setting compensation. Yet a majority of firms appear to already be engaged in this calculation: 66% of majority equity partners, 63% of minority-equity partners, 60% of majority income partners and 45% of minority-income partners said this factor was either "important" or "very important."

"Sixty percent of firms in the survey do not formally award origination credit."

- **Origination credit by matter, not by client.** A complementary practice is to reward origination credit according to who brings in a given matter, rather than who first introduced the client to the firm. Along with that, suggest that expansion of work does not go to first contact, but to the expander and also spread among the other secondary roles — important because women and minorities are more likely to be expanders than first contacts. Finally, suggest the sunset and then acknowledge how difficult change is.
- **Sunsets.** Some firms have a three-year sunset on origination credit. “At that point,” said James G. Cotterman of Altman Weil, “either new business credit ceases or is reduced. Other compensation credits, such as billing attorney credit and working attorney credit, would remain in most systems and palliate the abrupt reduction in new business credit.” Sunsets recognize the importance of origination, while also ensuring that different lawyers have relationships with a given client, to ensure that the client stays with the firm even if a single attorney on the team serving the client leaves.
- **Pitch credit.** A pervasive complaint by both women and people of color is that they are invited on pitches in order to appeal to in-house departments intent on diversity—but then get no origination credit. This could be eliminated by a clearly stated and widely disseminated policy to the effect that, if a woman or person of color is invited on a client pitch, that attorney needs to be given part of any origination credit that results from the pitch—and part of the work.

ENSURING A DIVERSE COMMITTEE HANDLES DISPUTES OVER REWARD ALLOCATION ORIGINATION CREDIT

Not only the system of reward allocation, but also the process for settling disputes, can make a tremendous difference for women and people of color. This study shows clearly that the current system, in which origination credit contests are left to be negotiated privately between the contesting partners is having a highly negative effect on many women and attorneys of color. This is precisely the kind of context—out of the public eye, with no oversight whatsoever—in which hidden bias flourishes.

The National Association of Women Lawyers recommends that firms establish “a powerful and diverse oversight committee” charged with resolving disputes over origination credit.

“A complementary practice is to reward origination credit according to who brings in a given matter, rather than who first introduced the client to the firm.”

TAKE A PRO-ACTIVE STEPS TO CHECK THE HIDDEN BIAS THAT WILL OTHERWISE EMERGE IN THE CONTEXT OF COMPENSATION SYSTEMS

The first step is to look very carefully at law firm compensation systems that are totally subjective. While these may work well in some small firms, they present very serious risks of gender and racial bias. This also have serious drawbacks from a business standpoint, which is why, as one consulting firms notes delicately, “Altman Weil’s consultants find it difficult to justify totally subjective systems. If a firm has a totally subjective system, benchmarking to assess whether it is creating racial and gender disparities is even more important.”

Even where a firm’s system is not totally subjective, subjectivity is an inevitable part of most firms’ compensation systems. If biases are unmonitored and unchecked, both women and attorneys of color often will find themselves having to “try twice as hard” to make half as much. This occurs, as noted above, because the successes of women (and the literature is much the same with respect to people of color) will tend to be overlooked or attributed to quirks of fate, while evidence of their failures and limitations will tend to be noticed, remembered, and interpreted as evidence of lack of merit. Again, this will happen even when the individuals in a given firm have no hostility or ill will towards women or people of color, and believe in good faith that they are sincerely committed to advancing women and attorneys of color.

Luckily, employers can institute practices that control for cognitive bias. The goal is not to eliminate bias, which is impossible, but to teach people what assumptions they need to double-check. An efficient way to accomplish this in a law firm setting is to require training in the context of performance evaluation, given each year, to introduce the four basic patterns of gender stereotyping:

- **Prove-It-Again!:** When women have to prove their competence over and over again in order to be judged as competent as men.
- **Tightrope:** When women face social pressure to play a limited number of traditionally feminine roles—and encounter pushback if they don’t. Research shows that, too often, women who conform to traditional roles are liked but not respected, while women who do not conform are respected but not liked. This is important for all attorneys because they all weigh in on others’ advancement and compensation (be it of associates or partners).
- **Maternal Wall:** When motherhood triggers strong assumptions that women are no longer committed or competent.
- **Tug of War:** When gender bias against women turns into conflicts among the women.

“If biases are unmonitored and unchecked, both women and attorneys of color often will find themselves having to *“try twice as hard”* to make half as much.”

The committee that decides compensation needs additional training to ensure that they do not penalize women for self-promotion, do not discount women's successes, do not award men more compensation "because they have a family to support" or award women less compensation "because they have someone to support them."

Many programs and consultants are available to provide this training. Another important resource is the American Bar Association's Commission on Women in the Profession's *Fair Measure: Toward Effective Attorney Evaluations*.

In addition, studies show that procedures that require the formal articulation of reasons for a decision provides a check on bias, because then people stop and self-check to examine their assumption. This recommendation poses a challenge for compensation systems that traditionally have operated in the closet. Unfortunately, that kind of decision-making opens the door wide to unexamined bias, particularly in an environment in which there are relatively few women, people of color or other diverse attorneys.

The literature also stresses that putting someone in charge of diversity who has access to leadership is the single most effective way to achieve diversity.

A minimum first step is to introduce a formal metric, formally disseminated, that reports the breakdown of women and people of color in tiers of compensation. This will no doubt be a controversial proposal but, again, "if you're not keeping score, you're only practicing."

CONFORM TO THE STANDARD BUSINESS PRACTICE BY LINKING COMPENSATION TO INDIVIDUALS' CONTRIBUTIONS TO THE LONG-TERM VIABILITY OF THE FIRM

An important point, rarely mentioned, is the current system's odd focus on current cash flow. To state the obvious, cash flow differs from the bottom line, which is a measure of the difference between revenue flow and expenses. Consultants sometimes circle around this, as when they note that partners in practice areas with higher profit margins should be rewarded financially.

To quote the Brian W. Bell of Hildebrandt Baker Robbins: "Very often celebrity lawyers...will...say 'They're not paying me enough money. I brought in \$2 million worth of business.' I'll look into it and I'll often find that it costs \$3 million to bring in that \$2 million worth of business."

He continued: "If you measure hours, receipts and originations, that doesn't take into account whether the work is profitable or not."

Of course, cash flow is easier to measure than the bottom line. A particular challenge faced by law firms is that those who manage them typically have had no training in how to manage a large business organization—nor do most law firm

"...studies show that procedures that require the formal articulation of reasons for a decision provides a check on bias, because then people stop and self-check to examine their assumption."

partners have an appreciation for what they did not learn by choosing not to go to business school. The lack of sophisticated management in the part feeds skepticism about the potential for sophisticated management in the future. The result, notes David Maister, is an absence of trust that leads to “extreme short-term orientations of many law firms. If partners don’t believe the firm will remember or value contributions to future success, why would they make any investment that they may ultimately not get credit for?”

The basic principle is easy to articulate: “Compensation theory generally says that you ought to be rewarding people for the behaviors that you are trying to elicit,” notes Joel F. Henning, the Senior Vice President and General Counsel of Hildebrandt Baker Robbins. The typical approach in most business settings is to link compensation to the individual’s annual goals, which in turn reflect the organization’s strategic plan. One survey respondent noted that her firm had instituted such a system outside of the compensation context: “Individual must meet the specific written elevation criteria and reflect/support standards set forth in the firm’s strategic plan.” Other comments offer intriguing hints of systems designed to reward teamwork when asked what factors into compensation: “Cross-office fertilization (ability to generate work for lawyers in other offices); ability to generate marketing and billable opportunities for lawyers in other practice groups.”

Law firms’ failure to link partners’ compensation to lawyers’ contributions to the long-term viability of the firm has a disproportionate impact on women, for several reasons. Most important, women lawyers often are under significant informal pressures to make such contributions, for example through service on committees related to recruitment, associate development and diversity. In addition, due to women’s history of gender discrimination in the profession, women may feel a greater obligation than do men to mentor women, and to help other women develop their careers—contributions that help develop a firm’s human capital, but rarely play a significant role when partner compensation is set.

A straightforward fix is for firms to reward all of the different kinds of contributions partners are asked to make to the firm, both through mentoring and other programs, and through committee work, on the theory that if the firm requires partners to make this type of contribution, it is important enough to the long-term future of the firm be recognized when compensation is set—and that if a given type of contribution is not important enough to recognize when compensation is set, perhaps it is not important enough to be required.

How these factors are taken into account also matters. For example, we suspect that most firms represented by lawyers in our survey say that they take into account, when setting compensation, partners’ contributions to diversity, associate development, etc. Yet many of our respondents were notably skeptical; evidently many felt that their firms gave lip service, but did not actually, take such activities into account to a significant extent when compensation was set. This finding may indicate that firms need to communicate better now they actually do take

“Law firms’ failure to link partners’ compensation to lawyers’ contributions to the long-term viability of the firm has a disproportionate impact on women, for several reasons.”

these types of contributions into account. Alternatively, firms may need to set up more formal systems than they currently have; it may be that existing informal recognition (“it’s in the mix; we just don’t quantify it”) translate good intentions into few results.

More sweeping than a mechanism for adding additional factors into the mix in setting law firm compensation is to shift to the type of compensation systems adopted long ago. For example, Ernst & Young’s compensation system weighs partners in four different arenas: quality, people, markets, and operational excellence.

Quality is, quite simply, the quality of the partners’ work—something rarely considered explicitly in law firm compensation systems. At Ernst & Young, detailed assessments of quality are performed for each major “engagement,” as client matters are called.

“People” concerns whether a partner is “actively involved in attracting growing and training our people,” said Cathy Salvatore, Director of Career Development, “because our people are the only thing we have.” Partners can choose how they will contribute to human capital development of others in the firm: “I tell them, these are the people who are going to pay for your retirement,” Salvatore said. Some partners choose to focus on recruiting, either on-campus or experienced hire recruiting. Individuals are given responsibility for recruiting from their alma maters. “They own it. It is their responsibility to see that we get what we need, and to make sure the relevant professors are happy.” Other partners focus on inclusiveness and diversity, or serve as Service Program leaders, teaching in-house training programs, and recruiting others to do so. Also included is how a partner interacts with his or her team. “How they are going to engage with people on the job? It is very easy for a partner to never be on the scene—to come in at beginning, at the end, and other than that only if there’s a problem. Younger people love to see the partners,” Salvatore noted. But a partner who spent all his or her time with their engagement team, who was totally invisible at office events and “was not driving anything cross functionally” would be penalized under the “People” category. The focus is on strategic development: “how are you contributing to what E & Y needs to do to make sure we have the strongest workforce, period—across all accounts not just your account.” A single respondent reported a law-firm system that reflects some of these concerns: her firm’s partner compensation took account of associate evaluations of partners.

“Markets” includes revenue generated, but goes far beyond that. It measures the extent to which a partner engaged in strategic development of new markets—not only for him or herself but also for the firm as a whole. Markets also measures whether the partner has brought in work, and worked strategically to penetrate new markets or develop new products. One consideration is “account planning—how you prepare to get your teams ready

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to deliver whatever service has been contracted for,” Salvatore noted. It also includes strategic work to penetrate a new market: “Who are we going to go after and how are we going to go after them.”

Operational excellence focuses on whether work is performed, and revenues are collected, efficiently and in a timely manner. So if a partner has “a lot of days of revenue sitting uncollected,” or has a significant number of write-offs, this would show up in the operational excellence metric. Also considered is “fee-sharing”: efficient deployment of the person with the relevant skill set who is closest to the geographical locale of the engagement. This discourages partners from using people they know over and over again because it may be more cost-efficient to use someone closer to the client,” said Salvatore.

A straightforward approach would be to adopt this kind of system: law firms who inquire will find that many of their larger clients have a similar system. Firms that feel this is too large a leap could adapt their current systems by awarding points for a variety of institutional investments (from management to developing the firm’s human capital). A third alternative is to set aside a specific percentage of firm profits to be distributed based on institutional investments.

DESIGN A COMPENSATION SYSTEM THAT DOES NOT PENALIZE PART-TIME PARTNERS

In some cities, the number of women partners who are working as part-time partners is fast approaching 20%. And although the numbers remain small, the number of partners working part time has almost tripled in the last 15 years. These numbers indicate an increasing demand for part-time work even at the partnership level and firms that support these flexible arrangements “are going to be able to hire from a larger pool of applicants, save recruiting costs by hiring fewer new lawyers, retain a diverse group of lawyers, reduce attrition costs, attract new clients, and increase the satisfaction of their current clients.” In addition, supporting part-time partners is often seen as a “powerful message of a firm’s commitment to diversity.” Given the increase in part-time work for law firm partners, coupled with the benefit that supporting it can bring to a firm, it is important that law firms understand how to design compensation systems for these part-time partners. It is also immediately relevant as 14% of part-time partners in one study felt that “their compensation was unfair” while a full 40% reported feeling stigmatized or devalued

The essential goal of the firm should be to recognize part-time partners’ contributions fairly, since “[un] fairness—whether real or perceived—will

“In some cities, the number of women partners who are working as part-time partners is fast approaching 20%.”

undermine the success of any part-time partner arrangement.” Suggestions for creating equitable systems that do not penalize these part-time partners include:

- Avoiding the “haircut” scenario by making sure that compensation for part-time partners is proportional. The “haircut” occurs when there is a disproportionate differential in pay and part-time partners who work, for example, 80% in terms of hours receive less than that percentage in pay. A fair system would mean being paid proportionally to the number of hours billed, not awarding fractional shares to part-time partners, and not indexing compensation to the actual number of billable hours if there is a tiered system.
- Compensating part-time partners for hours that they work in excess of those agreed upon. Similarly, if part-time partners end up having billings and/or originations that are comparable to full-time partners, they should be compensated accordingly. Ultimately, this means designing a system in which part-time partners’ compensation increases in conjunction with any increase in billable hours.
- Taking into account the non-billable contributions that part-time partners make to firm life. Part-time partners are often highly involved in firm governance and serve as managing partners, on compensation and hiring committees, and in associate training and mentoring programs. These activities build a strong firm and should be both recognized as valuable service and taken into account in compensation decisions.

“Avoiding the “haircut” scenario by making sure that compensation for part-time partners is proportional. The “haircut” occurs when there is a disproportionate differential in pay and part-time partners who work...”

Fair Measure: Toward Effective Attorney Evaluations

As law firms increasingly abandon lockstep and move toward competency-based systems, it becomes even more important to control for implicit bias in performance evaluations. An effective bias-free performance evaluation process has a positive and direct impact on advancement and retention. But, what is an "effective bias-free evaluation process" and does your law firm have one?

The ABA Commission on Women's second edition of *Fair Measure: Toward Effective Attorney Evaluations* authored by Joan C. Williams, Co-Founder of The PAR Research Institute, and Consuela A. Pinto, former Director of Education for The PAR Research Institute. This completely revised second edition manual contains a comprehensive review of the current social psychological literature on hidden gender bias and outlines a step-by-step process for implementing and conducting performance evaluations that are free from bias.

Additionally, it includes a checklist for evaluating the effectiveness of a firm's current evaluation program, sample evaluation forms and policy, performance evaluation training checklist and materials for supervising attorneys, a summary of the various forms of gender bias, tips for writing an evaluation and conducting the evaluation interview and an instruction packet for completing performance evaluations.

16 Tips For Writing a Bias-Free Performance Evaluation

- **Best Practice #1:**
Draft the comments before selecting a score from the rating scale.
- **Best Practice #2:**
Provide clear, detailed, and factual examples of behavior that either exemplifies proficiency in a certain objective or a need for improvement.
- **Best Practice #3:**
Consider only performance during the period of time under review. Base your comments on actual performance and not potential or effort.
- **Best Practice #4:**
Comment on every skill or attribute that you had an opportunity to observe during the review period. Do not simply give a score.

“An effective bias-free performance evaluation process has a positive and direct impact on advancement and retention.”

(cont.) 16 Tips For Writing a Bias-Free Performance

- **Best Practice #5:**
Weigh individual competencies similarly for all evaluatees.
- **Best Practice #6:**
Consider how you may have contributed to the attorney's performance in either a positive or negative way, particularly in conjunction with examples of poor performance.
- **Best Practice #7:**
Avoid using derogatory, disrespectful, or overtly biased comments.
- **Best Practice #8:**
Avoid basing scores and comments on the evaluatee's adherence (or lack of) to gender stereotypes.
- **Best Practice #9:**
Be accurate; do not exaggerate.
- **Best Practice #10:**
Be consistent with the feedback you provided to the attorney throughout the year.
- **Best Practice #11:**
Identify strengths and weaknesses using concrete examples of past performance.
- **Best Practice #12:**
Use a positive tone.
- **Best Practice #13:**
If appropriate, state where the attorney stands in terms of partnership.
- **Best Practice #14:**
Identify areas for improvement and professional development goals for the coming year.
- **Best Practice #15:**
With respect to assigning ratings, rely only on actual performance during the period under review. Do not base your decisions on effort or potential.
- **Best Practice #16:**
Finally, review the evaluations before submitting them to the next level. Look for consistency among the evaluations, accuracy, and biased comments. Check for implicit gender bias by looking objectively at (1) the ratings given to male and female associates to see if certain competencies are given greater weight in the evaluations of males; (2) whether the actions of female associates were reviewed more harshly; and (3) whether female associates' achievements were not accorded the appropriate level of significance.

“Identify strengths and weaknesses using concrete examples of past performance.”

Key Metrics for Assessing Progress on Diversity

In *New Millennium, Same Glass Ceiling: The Impact of Law Firm Compensation Systems on Women*, co-authored by The PAR Research Institute's co-founder Joan C. Williams, one best-practice recommendation was to establish baseline information on where women and diverse attorneys fall in the compensation system, along with regular monitoring and analysis of that data. Dewey & LeBoeuf, a large, international law firm, recently took its metrics to the next level. This firm, like many others, has long tracked the demographics of its associate population and has measured utilization of associates in terms of billable hours. The firm's Diversity Chair came to the conclusion that a better method was needed because aggregate data does not reflect the relative success of different demographics, nor whether individual associates have been provided the opportunity for meaningful career development.

The firm's new metric divides its associates into four categories:

- Associates billing at 1800+ hours who have worked for at least 100 hours (annualized) on a top-ten matter for his/her practice group ("top ten" is measured by revenue);
- Those billing at 1800+ hours who have not worked on any top-ten matters;
- Those billing fewer than 1800 hours who have worked on a top-ten matter; and
- Those billing fewer than 1800 hours who have not worked on any top-ten matters

The firm looked first at all of its associates in the United States, and then at the sub-groups: white male associates, female associates, ethnically diverse associates, and LGBT associates. The resulting data have already proved valuable both in reviewing the opportunities provided to individual associates and in reviewing the relative success of the various demographic cuts of the associate population. Going forward, the data will serve as a baseline for progress in its retention and promotion of diverse and female associates.

"...The firm looked first at all of its associates in the United States, and then at the sub-groups: white male associates, female associates, ethnically diverse associates, and LGBT associates."

Work Allocation Systems

In the current off-the-shelf model for law firm management, associate workflow is through informal assignment systems – “hey you” tasking or the free market model. Informal workflow systems align to partners’ needs to get work done efficiently, setting up the motivation to give a task to someone who has done it before and has shown to do it well. While this type of system works well for some, research suggests it works less well for women and people of color, resulting in uneven utilization and associate development. Formal work allocation systems are more effective in providing equal access to development opportunities. This is especially important under merit-based compensation and promotion systems, which are becoming increasingly common.

Vernā Myers, a nationally recognized expert on diversity in law firms, has set forth some of the critical components of a successful system. These include tracking assignments, benchmarking against core competencies, and managing through workflow coordinators, who communicate with both associates and partners and ensure that all are held accountable. Several law firms have been moving towards these kinds of best practices.

Goodwin Procter uses a home-grown tracking system, in which associates report weekly on what they are working on and what they would like to work on, as well as track their progression on the firm’s competencies. When an associate reports that he or she is working on an assignment that did not come through the staffing manager, the staffing manager follows up with the associate. The staffing manager can then discuss the matter with the partner and even take it off of the associate’s plate and re-allocate it if necessary. Goodwin has found that this work allocation system offers a variety of advantages. It helps control for uneven workflow. It makes staffing more efficient. It also provides for early feedback opportunities. For example, if a partner indicates that he or she does not want to work with a particular associate, the staffing manager is able to discuss the issue with the partner and ensure that feedback on past performance is delivered. The system also allows the firm to monitor how much time is written off and enables better tracking of utilization and realization.

Farella Braun + Martel LLP has devoted substantial resources to building an effective work allocation system for its litigation associates. The firm’s Director of Professional Development serves as staffing manager and is

“Formal work allocation systems are more effective in providing equal access to development opportunities.”

the first point of contact for partners who need associates to work on a given matter. The Director of Professional Development confers with the Practice Group Leader or Department Chair when a new case or matter needs staffing. The two work together to review the available associates to staff the case and communicate the decision to the partner.

Benchmarking is a key component of Farella Braun + Martel's system. The firm collects information about associates' cases and workloads to confirm that associates are getting opportunities to develop the skills in the firm's experience guidelines and competencies checklists and are meeting utilization goals. In addition, associates send in monthly workload reports to review what they are working on, what they anticipate is coming up, and what kinds of experiences they would like to get. These reports enable the Director of Professional Development to match up cases and assignments with associates in an effort to offer equal opportunity for development and advancement.

Another role that the Director of Professional Development plays is to serve as a liaison between the partners and associates. As an attorney who can talk to partners and associates about their cases, the Director of Professional Development uses his own litigation experience to match the clients' and partners' needs with associates' skills, interests, and workloads. The firm is able to better distribute work thus evening out utilization across the litigation group.

A second firm with a robust work allocation system is Goodwin Procter LLP. Taking lessons learned from staffing in the consulting world, Goodwin has instituted a new position: Manager of Staffing & Professional Development handles assignments for each group of fifty associates. The managers support a particular practice group and work with one or more of the firm's offices. These staffing managers, former-practicing lawyers, identify staffing needs, monitor associates' workloads and professional development, and allocate the work for the group. Partners contact their respective staffing manager when a new matter comes in or when they have an assignment that needs to be completed. The manager then gives the partners different staffing options. This system enables managers to monitor for inappropriate assignment patterns and hear about serious issues quickly.

The role of the staffing manager is linked closely to the business needs of the firm. The managers deliver more resources, better and faster, to partners in need, and have thus become trusted advisors to the partners. To facilitate this relationship further, the departments fund the managers from their budgets, and the managers report directly to their respective practice group leaders.

A final benefit of the kinds of work allocation systems adopted by firms such as Farella Braun + Martel and Goodwin Procter is to control the

“Benchmarking is a key component of Farella Braun + Martel's system. The firm collects information about associates' cases and workloads to confirm that associates are getting opportunities.”

kinds implicit biases that have been shown to affect the retention and promotion of women and diverse attorneys. Research shows that, without any evil intent, automatic biases will and do creep into a variety of workplace systems, including work allocation processes, unless processes are designed in ways to check automatic bias. Both firms dedicated the time and resources needed to put a well-working system into place. The PAR Research Institute is actively studying workplace allocation systems, and would welcome hearing from any other legal employer that has implemented a system that seems to be working well.

The bottom line: the last thirty years has dramatized that good intentions do not guarantee progress towards diversity and flexibility goals. By changing basic organizational systems, including the work allocation, performance evaluation, and compensation systems, firms can create a level playing field for all attorneys. Simply counting and recounting the number of diverse and women attorneys has not proved a recipe for progress. The PAR Research Institute’s goal with our “Diversity Beyond the Body Count” initiative is to provide legal employers with best-practice systems already in use that will lead to concrete progress on diversity goals.

“The bottom line: the last thirty years has dramatized that good intentions do not guarantee progress towards diversity and flexibility goals.”
