



Firms are wrestling with the competing considerations of providing alternatives that facilitate the retention of qualified people and crafting a compensation system that full-time lawyers perceive to be fair. Moreover, although lawyers with alternative schedules enjoy the additional time for personal and family endeavors, many are acutely aware of the effects these choices may have on their careers. Some employers have made great strides to implement fair and accessible alternative work arrangements; others have a long way to go.

A Cornucopia of Opportunities

The days in which “alternative work arrangement” meant “part-time” have long since passed. Law firms and government agencies allow lawyers—men and women—alternatives to

Alternative Work

Wave of the Future, or Fast-Track

working traditional schedules by offering a variety of employment options. Some examples follow:

Reduced Billable Hours. Reducing billable hour requirements for attorneys is increasing in popularity among law firms. The arrangement can be structured in several ways, as exemplified by Mary Jo Foster’s experience. While an associate attorney at Streich Lang (now Quarles & Brady Streich Lang), Foster chose to work a reduced-hours schedule after she and her husband adopted twin infants. At that time, the firm offered attorneys the option of working

reduced hours if they had satisfied billable hour requirements during the preceding two years and if both the affected department and firm management approved the arrangement. Under the arrangement, Foster was required to bill at least 80 percent of the standard billable hour requirement, and her full-time compensation was reduced by 25 percent. The 5 percent difference in the figures was attributed to overhead costs. She retained full nonmonetary benefits and, significantly, remained on track for partnership. Foster still worked full days during the week, but the reduced billable hour requirement allowed her to eliminate working most nights and weekends, as her case-load permitted. “Most people in the firm didn’t even realize that I was working a reduced-hours schedule,” says Foster.

LAWYERS ARE NO DIFFERENT from other professionals in their quest for balanced lives. Whether their goal is to spend more time with children, increase their community activities, care for aging relatives or pursue a hobby, many lawyers have thought about—or actually tried—reducing their work hours and their presence in the office during traditional work hours. Technology has made such alternatives even more feasible, as lawyers with flexible schedules can pull their cell phones out of diaper bags, dictate memoranda while driving to soccer practice and review trial exhibits from a laptop database.

But what is the effect on the lawyer’s career? Does she have more control over her professional and personal destiny and financial security? What about her employer? Does allowing flexibility comport with business objectives? How do traditional, full-time employees feel about such arrangements?

BY HON. ANN A. SCOTT TIMMER AND MAUREEN BEYERS

After leaving Streich Lang, Foster became special counsel to the Phoenix office of Littler Mendelson and asked that she be allowed to work a reduced billable hours schedule. The firm was receptive to Foster's request and agreed that she could bill 85 percent of the full-time requirement and receive a corresponding 15 percent reduction in compensation. In addition, she receives full benefits, remains on the partnership track and is eligible for all bonuses unrelated to exceeding her billable hour quota. "The reduced-hours arrangement is worth it to me," says Foster, "because it eliminates my worries about hitting my billable hour requirement and gives me the time to engage in family, community and bar activities."

Elizabeth Fitch, a partner with the Phoenix firm Turley, Swan & Childers, has tried various work arrangements since the births of her sons during the past six years. Currently, she works from 9:00 a.m. until 3:00 p.m., Monday through Friday. Fitch reports that she is generally able to arrange her busy litigation

Telecommuting. Not surprisingly, the onslaught of technology has spawned an assortment of work arrangements. Patricia Doyle-Kossick, for example, takes full advantage of the computer age to reconcile her full-time work schedule with a sometimes-hecktic family life that includes taking care of her children and an ill parent.

Doyle-Kossick, a bankruptcy attorney with the Tempe firm Golston, Keister & Steen, typically works in her office for an entire day on Tuesdays and half-days during the remainder of the week. Otherwise, she works at her home office, baseball practices, doctors' offices and even grocery stores. Anyone who calls Kossick at her office is immediately transferred to her cell phone. "Most people don't even realize I'm not in the office," explains Kossick:

When they realized their calls were transferred to my cell phone, they usually asked how it's done and how much it costs! It's very simple and inexpensive to establish the transfer system in the firm's telephone system and once the feature is enabled, calls can be seamlessly transferred to anyone's phone.

Kossick claims that she could not work as she does without the assistance of a computer program that links her home and office computers. "I can access any file on my office's network from home and work on it," says Kossick. "If I need to research an issue, I dial up Westlaw on the Internet, use my firm password and proceed. After I'm finished, I can even record my time on the firm's billing program through my link." "The only disadvantage to this set-up," she jokes, "is that I can't justify not working in the evenings or weekends by saying that I forgot to bring my files home."

Staggered Hours. Under a staggered-hours arrangement, lawyers can structure their days to fit their lifestyles. Mary Jo Foster, for example, worked a "5-4-9" schedule at the Equal Employment Opportunity Commission. Following this schedule, Foster alternated between working five days one week and four days the next; she worked nine hours each day. "Having one extra day off in alternating weeks was great," says Foster. "It was one of the benefits of working for the government."

Staggered work hours also can fulfill community needs. For example, Tim Keller, law clerk to Judge Ann A. Scott Timmer (an author of this article), works from 6:30 a.m. to 3:30 p.m. each weekday. Originally, Judge Timmer and Keller agreed on the schedule to meet Gov. Jane Hull's call to create work schedules that reduce road travel during peak commuting hours. But Keller finds that his arrangement also benefits his family life. Keller, a new father, now spends more waking hours with his son by arriving home in the late afternoon. "Frankly, I also enjoy working during the quiet morning hours before most people come to work," Keller says.

Flex-time arrangements are common in other government entities, as well. For example, the City of Phoenix Law Department offers job sharing and flex-time for attorneys in certain bureaus. The Attorney General's office requires all attorneys to work 40 hours per week, but the hours may be logged in fewer than five days or while telecommuting.

Arrangements

to Career Derailment?

practice around her schedule. "For example, I try to set depositions in the mornings and ask opposing counsel to do the same," Fitch relates, "and people have been very accommodating." While in trial, however, she works a traditional schedule and scrambles to establish child care. Fitch is only obligated to cover her share of the firm's overhead. "Any reduction in my billable time comes out of my share of the profits," Fitch says, "and I'm willing to live with that right now."

Job Sharing. "Job sharing" literally means to split one position between two attorneys. Colleen French and Bonnie Gordon opted for this arrangement at Division One of the Arizona Court of Appeals after each had her first child. Each lawyer "split" a staff attorney position with a colleague. In French's case, she and her "job partner" each worked Mondays, Tuesdays and half-days on Wednesdays. "We also shared the same office," French recalls with some amusement, "which became bothersome when we each used a Dictaphone, but we survived and liked the arrangement." Only French's partner initially received benefits, but French was eventually given full benefits as well. When French's children grew older, she left the court and assumed a full-time practice.

Gordon also enjoyed the benefits of job sharing. She and her job partner split the week in half, but each had a separate office. Both received full benefits. After Gordon's job partner left the court, Gordon parlayed her job into a part-time situation. She currently works 20 hours each week. Says Gordon, "I enjoy the best of both worlds. I have plenty of time with my daughter, yet still work as a lawyer in a job that I love. It's the ideal situation."

Contract Attorneys. One of the earliest alternative work arrangements in the legal community was to allow lawyers to practice with a firm on a contract basis. Under that arrangement, the lawyer may or may not have an office at the firm and works on an as-needed basis for an agreed-upon hourly or project-based amount. Benefits typically are not paid to a contract attorney.

Patricia Magrath opted to become a contract attorney for 18 months in the mid-1990s for the Phoenix branch of Morrison & Hecker. Unlike many other attorneys who choose an alternate work arrangement to accommodate family obligations, Magrath selected it to give her more time to travel and pursue nonlegal interests. “I worked extremely hard for many years as both an associate and partner in law firms,” Magrath remembers, “and I just wanted more time to pursue other interests.” As a contract attorney, Magrath worked on just one large case and was not guaranteed future employment when that case ended. She occupied an office in the firm and had access to support staff. Magrath was paid an hourly rate and worked as many hours as needed.

Common Barriers to Effective Programs

Last year, the Women’s Bar Association of Massachusetts conducted a comprehensive study of part-time attorneys. The

resulting report, titled *More Than Part-Time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment, and Success of Women Attorneys in Law Firms* (the “Massachusetts Report”), focused on the existence and implementation of part-time policies at Massachusetts law firms and the effect of those policies on the participants. There were few success stories.

Most firms—including firms in Arizona—do not have any written guidelines. *Arizona Attorney* magazine surveyed more than 80 law firms and other employers to determine the availability of alternative work arrangements throughout Arizona (see results below). In many situations, employers merely indicated that they provide such arrangements “on a case-by-case basis.” Whether that open-ended approach is more an invitation or a barrier is an unanswered question.

Not surprisingly, loose oral arrangements often lead to misunderstandings and perceptions of inequity. In contrast, written guidelines define expectations and go a long way toward eliminating the unfairness that those on the other end of the spectrum—the full-time lawyers—might perceive. Unwritten rules can leave the part-time lawyer guessing, and this uncertainty fosters the notion that part-timers are getting more than they deserve.

Written guidelines alone, however, are not enough. As the

Alternative Work Arrangements Survey

Arizona Attorney surveyed legal employers in the state to learn more about the existence and use of alternative work arrangements for lawyers. We sent a questionnaire to more than 80 employers; 24 were law firms, and the remainder were courts or government agencies. Here are some of our findings.

Existence of Alternative Work Arrangements

- 93% of law firms offer alternative work arrangements.
- 36% of government agencies do so.

Are Alternative Work Arrangements More Likely To Be Offered at Firms With More Women? Surprisingly, No.

- At firms with 11-20 women equity partners, partners, and associates, 75% offer flex-time or a compressed work week.
- At firms with more than 20 such lawyers, 40% offer flex-time, and 20% offer a compressed work week.

Types of Alternative Arrangements Offered

	Firms	Agencies
Telecommuting	83%	78%
Part-time/reduced hours	83%	56%
Flex-time	50%	90%
Compressed work week	42%	22%
Job sharing	8%	33%

Repercussions for Using Alternative Work Arrangements

- Agencies reported an occasional change in work assignments.
- Of those firms that offer alternative arrangements, 73% reported that time to partnership increases when such arrangements are used.
- For those already in senior positions and who make use of such arrangements, one firm indicated a possible loss in partnership; a few firms indicated that changes might be made on a case-by-case basis (e.g., different compensation).

Benefits for Maternity/Paternity Leave Beyond FMLA Requirements

- 67% of firms and 27% of agencies offer additional leave.
- Five firms offer paid leave; four agencies offer such leave.
- Pay was sometimes partial; leave ranged from 12 weeks to one year, sometimes dependent on accrued sick or vacation time

Challenges to Expanding Alternative Arrangements Listed by Employers

- For agencies, the biggest challenge is that court appearances and dockets are tied to schedules that allow little flexibility. Also mentioned is the fact that access to information is more difficult from home.
- For firms, the biggest challenge mentioned is that clients need easy and immediate access to attorneys. Other challenges are collegiality, the perception of pulling one’s fair share and access to information.

Massachusetts Report notes, “What you say is not as important as what you do—and how you do it.” There exists a perceived notion that a lawyer with multiple priorities (family and career, for example) is somehow not as committed to the practice as a full-time lawyer. To many women, this is as offensive as the flip side of that concept: that a working mother is less committed to her children. This perceived lack of commitment manifests itself in many ways: lack of support from the firm, the deterioration of professional relationships and adverse consequences to the lawyer’s career.

Lawyers with part-time arrangements, for example, are often relegated to piecemeal projects, research memoranda and other mundane tasks, regardless of their experience or talents. The plum assignments often are doled out to those who are more “serious” about the profession.

The importance of “commitment” and assumptions about how much is required underlie the *Arizona Attorney* survey results. When asked about the challenges they face in expanding alternative work arrangements, employers primarily pointed to restrictions inherent in the work and customer service:

- Courts and government agencies indicated that court appearances and dockets are tied to specific schedules that allow little flexibility. They also noted that access to information is more difficult from home.
- Firms indicated that their biggest challenge is that clients need “easy and immediate access to attorneys.” Firms also were concerned about collegiality, the perception of pulling one’s fair share and access to information.

Given these barriers, perhaps technology will facilitate changed attitudes by making information more accessible.

More difficult to confront are the concerns about client access and collegiality. Ironically, alternative efforts may be undercut by technology, which has created an instant environment in which attorneys and clients expect constant interaction: Gone are the days when a half-day wait before returning a call constituted acceptable customer service.

If employers fear a decrease in collegiality, they need look no further than the quality of life for those who avail themselves of alternative arrangements. Among them, the effect on interpersonal professional relationships is even more obvious and pervasive. Part-time lawyers almost universally express feelings of detachment, isolation and ostracism. “I’m not a second-class citizen here, I am a third-class citizen,” a part-time lawyer in Phoenix told us. “Socially? I’m an afterthought, not worthy of meaningful consideration.” Part-time partners are often excluded from important firm committees or find that their work is consistently on the bottom of associates’ piles of things to do.

Employers: Put It in Writing

- What is the compensation formula?
- If there is a minimum number of billable hours expected of the part-time lawyer, spell it out.
- If the minimum number of hours is not achieved or, conversely, exceeded, delineate the consequences and rewards.
- If the partnership track is longer for the part-time associate, define it.

Although part-timers often find that they need to curtail their involvement in firm social activities to devote more time to family and outside activities, these limitations are not always self-imposed: For example, having lunch with a part-timer is no way for an associate to advance his career.

The perceived lack of commitment extends not only to the lawyer’s dedication to the practice, but also to the firm itself.

- At some firms, part-time lawyers cannot become partners, or, if they do, they cannot become equity partners—one example of the proverbial “mommy-track.”

- In at least one large Phoenix firm, part-time lawyers are eligible for partnership only on a contract basis; equity membership is limited to full-time attorneys.

- Some firms exclude part-timers from involvement in firm committees, especially the important ones. “I actively solicited involvement in firm committees,” one Phoenix-based part-timer stated, “but no one wanted to ‘bother’ me with that. As a result, I think I am the only one at the firm who is not on at least one committee.”

Adverse career consequences abound in the area of client development, but curiously, not necessarily from the vantage point of the client. Although many Arizona companies offer flex-time or reduced time schedules for their workforce, part-time lawyers are often kept in the closet. “None of my clients knows I leave the office every day at 2:00,” says a Phoenix part-timer. “They have no idea that I may be returning their calls from home.”

Assumptions about the commitment of part-time lawyers are dangerous. They are as prejudicial as excluding them from the practice altogether. Even putting gender aside, these assumptions may preclude any lawyer from pursuing balance and outside activities, in the name of “face time.” If a part-timer acts indifferent, inefficient, unprofessional or for any other reason does not make the grade, that’s one thing. But to exclude, ignore, devalue and stereotype part-timers is not only wrong, but it hampers retention.

Effects on Traditional Full-Time Lawyers

There is another side to this coin, of course. The part-time lawyer needs to truly appreciate the needs of her full-time counterparts. Unless open and fair, part-time arrangements are likely to engender resentment: “How come she gets to go home at 5 and I have to stay here all night closing this deal?” Firms fool themselves if they think that this perceived (and maybe real) unfairness can be eliminated altogether. But it can be minimized.

No one can seriously suggest that we are soon to become a society of part-time lawyers—the desire for professional and financial rewards often weighs against it. Nevertheless, resentment brews, and how the firm handles compensation and benefits goes a long way toward eliminating it.

- Some firms compensate pro rata based on the percentage of time the lawyer billed compared with an equivalent full-timer.
- Other firms pay reduced-time lawyers an hourly sum based on a percentage of their billable rate.
- Still others estimate billable hours for the year and pay a

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salary based on that target.

- Some firms reduce or even eliminate benefits for part-time lawyers.

Regardless of the formula, there needs to be a built-in financial disincentive to opt for reduced hours. To reduce the resentment, the part-time lawyer needs to make a financial sacrifice in exchange for more time out of the office. Just as important is the notion that the arrangement must be adjusted to provide that the part-time lawyer generate at least her overhead. It is essential that the full-time lawyer not feel as though she is “carrying” her part-time colleagues. “Profitability is the only thing that works,” remarks a part-time partner in Phoenix. “If the arrangement is profitable for the firm, it works; if the lawyer is not profitable, the arrangement fails. The part-time lawyer must carry her weight.”

Openness is also critical. Secret deals between management and part-time lawyers foster an atmosphere of inequity.

Another sticky issue surrounds the definition of part-time. To whom does it apply? A partner winding down? Someone with an aberrant bad year? Inflexible rules about who is and who is not a part-time lawyer can inadvertently label lawyers as part-time. Guidelines about what is considered part-time are helpful, but defining the term by setting minimum billable hours for all lawyers is probably unwise.

Finally, the part-timer needs to be as flexible with the firm as she wants the firm to be with her. If a part-timer always acts as though she is punching a clock, then her peers may justifiably resent her. The arrangement, after all, needs to work for the firm and its clients, too.

Hon. Ann A. Scott Timmer is a judge on the Arizona Court of Appeals. She was appointed to the bench in 2000 following 15 years of practice. During that time, she has raised three children and has always worked a traditional, full-time schedule.

Maureen Beyers is a lawyer at Osborn Maledon, P.A., in Phoenix. She has practiced law for 14 years and, since moving to Arizona six years ago, has worked on a reduced-hours schedule. She is the mother of two children.