



PROJECT *for* ATTORNEY RETENTION

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THE BUSINESS CASE FOR A BALANCED HOURS PROGRAM FOR ATTORNEYS

An effective and usable part-time program can end up making a firm *more* profitable. Successful law firms around the country are beginning to realize that responding to the demand for balanced hours helps stem attrition, creates more satisfied clients, enhances recruitment and saves money. Balanced hours programs that are driven by firms' business needs rather than the perceived need to offer "special accommodation" make business sense.

Attracting and Retaining the Best Attorneys

Law firms sell talent. To attract and retain the best attorneys, legal employers need to offer them the work environment and lifestyle they need. Even as a majority of law school graduates continue to accept employment in the private sector, and as the number of overall available attorney jobs increases, the number of new attorneys seeking jobs at private law firms has declined each year since the class of 2001.¹ Why?

- Nationwide, 81% of women become mothers² and 95% of mothers work fewer than 50 hours/week.³ Thus, an employer that requires 2200 billable hours annually – which equates to working from 8:00 a.m. to 8:00 p.m. every weekday and seven hours on Saturday, three times a month⁴ – stands to systematically eliminate more than three-fourths of women from its labor pool⁵ in an era when nearly half of law school graduates are women.⁶
- In a recent Catalyst study, 45% of female law graduates cited "Work/Life Balance" as the number one reason for choosing their current employers. Thirty-four percent of male law graduates reported that work/life balance was among their top three reasons for selecting their current employers.⁷
- This desire for balance is not limited to those with parental responsibilities. Ninety-five percent of all adults report that their life outside of work is equally as or more important than their work.⁸ Older attorneys want phased retirement and others need time to care for elderly parents and sick spouses or partners.⁹
- Despite this documented preference for balance, a recent NALP study found that more than 75% of supervised attorneys reported having moderate to major problems in meeting their personal and health needs.¹⁰ More than 70% reported having moderate to major problems meeting family and parental needs, handling household responsibilities, and finding time for cultural and leisure activities.¹¹
- Notably, nearly half of law firm respondents and 41.6% of corporate respondents revealed that they would be willing to take a pay cut if it meant working fewer hours.¹²
- Statistics show that Gen-Y attorneys are even more likely to insist on work/life balance than older generations.¹³

"No well-run business would do anything to limit its attractiveness to half of the talent pool (but that's exactly what law firms do)."

- James Sandman, then Managing Partner, Arnold & Porter¹⁴

"There is a shortage of human capital. Women are an important part of that, because there just aren't enough men to do the work. That's the simple reality of it."

- Principal in a national legal search firm¹⁵

Ensuring Client Satisfaction

- Clients who spend a lot of time bringing an attorney up to speed get upset when, over and over again, an attorney they have invested their time in leaves a firm. This largely explains why many corporate counsel support part-time programs in law firms.¹⁶
- A 2003 study found that virtually all corporate counsel expressed willingness to work with part-time attorneys. Their concern, rather than whether an attorney works a standard- or balanced-hour schedule, is whether or not that attorney is accessible to them. Some corporate counsel found part-time attorneys *more available*, and thus preferable to full-time attorneys.¹⁷
- Reducing an attorney's hours will *not* result in *slower turnaround*. Instead, attorneys assigned to *fewer matters* or *fewer clients* are more accessible, and therefore, more valuable to clients.¹⁸
- As of November 2005, 90 Chief Legal Officers had pledged to evaluate law firms with whom they would consider working based in significant part on the diversity performance of each firm. These Officers resolved: "We further intend to end or limit our relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse."¹⁹

"My outside counsel is not available to me all the time anyway because of travel, depositions, and commitments to other clients, and he works full-time. I don't notice a difference if someone works part-time."

- Corporate counsel²⁰

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

- Linda Madrid, then General Counsel, CarrAmerica²¹

"There is no question in my mind that outside attorneys who have balance in their lives bring a more well-rounded perspective and provide higher quality service to their clients. ... not to mention there tends to be higher retention and better continuity of service, which factors prominently into law firm selection decisions."

- Lauri Shanahan, Executive Vice President, Chief Compliance Officer and General Counsel, Gap Inc.²²

Controlling the High Costs of Attrition

- Thomson West estimates that US law firms are spending roughly *\$1 billion* each year on training and professional development for their attorneys.²³ Despite this considerable investment, nearly 80% of all associates have left their large law firm by their fifth year of practice.²⁴ Of those remaining, 55% of mid-level attorneys do not expect to be working in a law firm in five years.²⁵
- By conservative estimates, it costs a firm \$200,000 to replace a second-year associate.²⁶ (Other estimates range from \$280,000-\$500,000.)²⁷ These costs include interviewing time spent by partners and associates at the firm, hiring bonuses, lost training costs for the departed attorney and additional costs of training the new hire. **Every time five associates walk out the door, a firm loses a million dollars or more.**
- Not surprisingly, recent studies of the causes of attrition show that the desire for a healthier work/life balance plays a significant role in associate departures. According to NALP, the percentage of attorneys interested in changing employers decreased as the number of balanced work/life initiatives offered increased.²⁸

"It's not only that they leave the firm, they leave and go to our competitors. It's like writing out a check to a competitor and obviously we don't like doing that."
- Partner at Deloitte & Touche USA²⁹

"We are spending substantial amounts to recruit [associates], keeping them here and training them for the first two or three years in which they are not profitable, and then we see them begin to leave at about the time they become profitable."
- Partner in a Washington DC firm³⁰

"There is so much discussion of how part-time attorneys struggle in terms of achievement and advancement, so for them to register such high degrees of satisfaction [a survey of part-time attorneys revealed they are happier than their peers] says to me that, despite obstacles, these arrangements can work and that people can remain with their employer."
- Susan Saab Fortney, researcher and author for NALP³¹

Dispelling the Myth that Firms Lose Money on Part-Timers

- Law firms that focus on short-term cash flow rather than their bottom lines often erroneously fear that they can't afford to let people work part-time.
- Accounting firms such as Ernst & Young and Deloitte & Touche take a different approach to evaluating profitability and compensation. These firms realize the high costs associated with failure to "keep the keepers" and are increasingly valuing people-management skills (or the lack of them) as a factor when setting partnership compensation.
- The misconception that part-time attorneys are not able to cover their overhead stems from the convention of allocating overhead equally among all attorneys, overlooking the fact that partners often generate more overhead than associates. Best-practices firms

have abandoned this convention and have developed more accurate systems that change the perceived economics of part-time attorneys.

- The economics of part-time need to be examined by each firm, using real numbers based on the firm's experience. Undoubtedly, some firms will find that a fifth year associate retained by the firm through a part-time schedule who bills 30 hours a week at \$300 per hour generates more revenue than an entry-level associate, hired to replace a departed attorney, who bills 40 hours a week at \$200 per hour.
- Firms may also find that the costs of continuously replacing associates who leave to find a better work/life balance are so high that they outweigh any decrease in revenue.
- Although there is a widespread fear that having an effective balanced hours policy will "open the floodgates" to requests for reduced hours schedules, that is not a realistic concern. Firms that pride themselves on their work/life efforts find their usage rates are between 7% and 11%. Palmer & Dodge, with the "high" usage rate of 14%, has remained extremely profitable.³²

"Oftentimes it is the internal accounting practices that ensure that part-time employment will be infeasible."

- Alison Hooker, Ernst & Young³³

"The two (overhead) items I hear mentioned most often are occupancy expense—rent—and malpractice insurance, neither of which is reduced for a part-time lawyer ... [A] part-time lawyer working 75 percent of the hours of a full-time lawyer ... is incurring \$10,000 in occupancy cost and \$1,000 in malpractice insurance expense more than would be the case if it were possible to reduce those costs pro rata with the lawyer's reduced schedule ... [A] lawyer working a 75 percent schedule would, on average, generate \$400,000 in revenue. The \$11,000 in so-called additional cost looks immaterial to me when other relevant numbers are known."

- James Sandman, then managing partner, Arnold & Porter, LLP³⁴

Mismanaging a Part-Time Program is a Risk Management Issue

- Employers increasingly have to defend themselves in lawsuits alleging discrimination against employees with family responsibilities. These suits include pregnancy discrimination, interference with and retaliation for FMLA leave, harassment of new mothers, and discrimination against new fathers—many of whom are denied family leave.
- The stigma commonly associated with part-time work tracks the fact pattern of many family responsibilities discrimination cases. In fact, legal employers have been sued more than 30 times³⁵ for issues related to family responsibilities or part-time work, with liability reaching \$1.5 million.³⁶
- In order to avoid such suits stemming from gender stereotypes, law firms should ensure that they have quality part-time programs that are not stigmatized and that allow part-time attorneys to advance professionally.
- **Indeed, the best defense to family responsibilities discrimination is a quality balanced hours policy.**

“One part-time lawyer found to her surprise that they had forgotten to invite her to the practice group retreat. They had invited male attorneys junior to her, but they forgot to invite her.”

- Law Firm Consultant³⁷

The “haircut” (e.g., paying part-time attorneys 60% of a full-time salary for 80% of the full-time hours) is still common in some cities despite its potential for creating legal claims under the Equal Pay Act (EPA) and Title VII. For example, a federal district court held that paying a woman chemist who worked a 75% schedule a lower effective pay rate than a full-time male chemist who performed substantially the same work violated the EPA; part-time status alone cannot justify a lower rate of pay.³⁸ Disparate pay claims are also cognizable under Title VII.

“I worked full-time at first, and then switched to part-time after my first child was born. Everything changed once I moved to part-time. I was taken off all firm committees, and one partner didn’t want to work with me any more—he said it was because I couldn’t travel, although he never asked me if I could still travel.”

- Part-Time Attorney³⁹

¹ Leigh Jones, *Interest in Summer Jobs at Top Firms Cools Down*, THE NATIONAL LAW JOURNAL, May 14, 2007.

² Jane Lawler Dye, *Fertility of American Women: June 2004, Population Characteristics, P20-555* (U.S. Census Bureau, Dec. 2005), at 2, available at <http://www.census.gov/prod/2005pubs/p20-555.pdf> (stating that 19.3% of women aged 40 to 44 had no children).

³ Original calculations by Mary Still for the Center for WorkLife Law based on United States Census Bureau, *Current Population Survey: 2006 March Supplement*, using the DataFerrett, <http://dataferrett.census.gov> (files generated April 26, 2005).

⁴ Institute of Management and Administration, *Have Your Billables Become Unbearable?*, 04-6 COMPENSATION & BENEFITS FOR L. OFF. 4 (2004) (based on data generated by Yale Law School Career Development Office).

⁵ 95% of 81% is 77%.

⁶ 2006 Report: NAWL’s First National Survey on Retention and Promotion of Women in Law Firms 1.

⁷ CATALYST INC., *WOMEN IN LAW: MAKING THE CASE* 19 (2001).

⁸ SIMMONS SCHOOL OF MANAGEMENT & BRIGHT HORIZONS FAMILY SOLUTIONS, *THE NEW WORKFORCE REALITY: INSIGHTS FOR TODAY, IMPLICATIONS FOR TOMORROW* 7 (2005).

⁹ *Work and Elder Care: Facts for Caregivers and their Employers* (U.S. Department of Labor, Women’s Bureau 1998), available at http://www.dol.gov/wb/wb_pubs/elderc.htm (Reports that almost one in four American households provides care to an elderly relative or friend, which impacts work schedules).

¹⁰ SUSAN S. FORTNEY, NALP FOUND., *IN PURSUIT OF ATTORNEY WORK-LIFE BALANCE: BEST PRACTICES IN MANAGEMENT* 25 (2005).

¹¹ *Id.* at 17.

¹² *Id.* at 50.

¹³ Kirstin Downey Grimsley, *Family a Priority for Young Workers; Survey Finds Change in Men’s Thinking*, THE WASHINGTON POST, May 3, 2000, at E1 (reporting on a survey by Harris Interactive and the Radcliffe Public Policy Center).

¹⁴ Emily Barker, *Engendering Change*, THE AMERICAN LAWYER, June 2003, at 2.

¹⁵ CATALYST, *supra* n.7, at 26.

¹⁶ THE PROJECT FOR ATTORNEY RETENTION, *WORK LIFE LAW, BETTER ON BALANCE?: THE CORPORATE COUNSEL WORK LIFE REPORT* (2003), available at <http://www.pardc.org/Publications/BetterOnBalance.pdf>. The Corporate Counsel Project studied both work/life balance in corporate law departments and ways in which corporate counsel, as clients, can assist law firms in implementing balanced hours programs. Interviews with general counsels and their subordinates have included frequent and frank complaints about turnover at law firms.

¹⁷ JOAN C. WILLIAMS & CYNTHIA T. CALVERT, NAT'L ASS'N FOR LAW PLACEMENT, SOLVING THE PART-TIME PUZZLE 133 (2004).

¹⁸ *Id.*

¹⁹ A Call to Action: Diversity in the Legal Profession, *Commitment Statement*, available at <http://www.cocalltoaction.com> (last visited July 15, 2007).

²⁰ WILLIAMS & CALVERT, SOLVING THE PART-TIME PUZZLE, *supra* n. 17, at 133.

²¹ THE PROJECT FOR ATTORNEY RETENTION, *supra* n. 16, at 52.

²² E-mail from Lauri Shanahan, Executive Vice President, Chief Compliance Officer and General Counsel, Gap Inc. (Mar. 2006) (on file with Center for WorkLife Law).

²³ THE HILDEBRANDT INSTITUTE, CHANGING APPROACHES TO LAWYER TRAINING: THE LATEST BATTLEGROUND IN THE GROWING WAR FOR TALENT 4 (2006).

²⁴ Jones, *supra* n. 1.

²⁵ Elizabeth Goldberg, *Midlevel Blues*, THE AMERICAN LAWYER, August 1, 2006.

²⁶ Natasha Sarkisian, *Who Says Being a Lawyer Has to Suck?*, S.F. MAG., Jan. 1 2007, available at http://www.sanfrancmag.com/archives/view_story/1517/.

²⁷ Lisa Gold, *How to Improve Associate Retention: Old Reward System No Longer Effective*, THE LEGAL INTELLIGENCER, Apr. 19, 1999, at 7.

²⁸ FORTNEY, *supra* n. 10, at 45.

²⁹ Personal communication by Linda Marks with Partner at Deloitte & Touche USA (2001).

³⁰ WOMEN'S BAR ASSOCIATION OF MASSACHUSETTS, MORE THAN PART TIME: THE EFFECT OF REDUCED-HOURS ARRANGEMENTS ON THE RETENTION, RECRUITMENT, AND SUCCESS OF WOMEN ATTORNEYS IN LAW FIRMS, available at <http://womenlaw.stanford.edu/mass.rpt.html> (2000).

³¹ Jill S. Chanen, *Discontented in the Law: Supervised Lawyers Report Struggle To Balance Work and Family, Survey Shows*, ABA JOURNAL E-REPORT, Mar. 17, 2006, available at <http://www.abanet.org/journal/ereport/m17study.html> (last visited July 16, 2006).

³² WILLIAMS & CALVERT, SOLVING THE PART-TIME PUZZLE, *supra* n. 17, at 137.

³³ JOAN C. WILLIAMS & CYNTHIA THOMAS CALVERT, THE PROJECT FOR ATTORNEY RETENTION, BALANCED HOURS: EFFECTIVE PART-TIME POLICIES FOR WASHINGTON LAW FIRMS, FINAL REPORT 45 (PAR ed., 2d ed. 2001), available at <http://www.pardc.org/Publications/BalancedHours2nd.pdf>.

³⁴ James Sandman, *The Business Case for Effective Part-Time Programs*, 88 WOMEN LAWYERS J. 16 (2003).

³⁵ Joan C. Williams, Stephanie Bornstein, Diana Reddy and Betsy A. Williams, *Law Firms as Defendants: Family Responsibilities Discrimination in Legal Workplaces*, 34(2) PEPP. L. REV. 393 (2007).

³⁶ Diane E. Lewis, *Lawsuit Sets Precedent Against Misperception of Working Moms*, THE BOSTON GLOBE, June 18, 2000, at F2.

³⁷ WILLIAMS & CALVERT, BALANCED HOURS, *supra* n. 33, at 15.

³⁸ Lovell v. BBNT Solutions, 2003 U.S. Dist. LEXIS 22360, 2003 WL 22940922 (E.D. Va. Dec.11, 2003).

³⁹ WILLIAMS & CALVERT, SOLVING THE PART-TIME PUZZLE, *supra* n. 17, at 30.