

Appendices

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Appendix A

THE PROJECT FOR ATTORNEY RETENTION

Interim Report

March 2001

Effective reduced-hours programs can save law firms millions of dollars through increased retention rates. Permitting attorneys to work fewer hours without stigma can create attorney satisfaction, establish a firm as an "employer of choice" that cares about diversity, and improve recruiting efforts. Ineffective part-time programs, by contrast, cost firms millions in lost productivity and attrition. They create disillusionment among attorneys, law firm management, and even clients, and tarnish a firm's reputation.

Law firms in the District of Columbia typically offer part-time programs to their attorneys, but part-time work is stigmatized and is not providing the firms or their attorneys with the benefits that good reduced-hours programs provide. Moreover, D.C. law firms believe that their part-time programs are much better than they are. These are two key findings of the Project for Attorney Retention.

THE PROJECT FOR ATTORNEY RETENTION

The Project for Attorney Retention ("PAR") is an initiative of the Program on Gender, Work and Family of American University, Washington College of Law, funded by the Alfred P. Sloan foundation and supported by the Women's Bar Association of the District of Columbia. PAR began studying D.C. law firms in June 2000 with the goals of learning the current state of part-time work at D.C. law firms and developing benchmarks, recommendations, and a model policy for effective reduced-hours programs for these firms. PAR's advisory committee includes leaders from the D.C. legal community, representatives from corporations that have notable work/life programs, and work/life experts. PAR's work has included: interviews with law firm managing partners, hiring partners, partners in charge of part-time programs, and human resources personnel from amongst the 90 largest law firms in the District of Columbia; focus groups, interviews and surveys of attorneys who have worked, are working, or would like to work less than full-time at their firms; interviews of representatives from non-legal corporations and of partners at law firms outside of the District of Columbia that have increased their retention rates through effective reduced-hours programs; and conferences with sociologists, psychologists, and work/life consultants. More information about PAR can be found at PAR's website: www.pardc.org.

PAR's final report, benchmarks, and model policy are expected to be released in late May 2001.

HOW FIRMS SAVE MONEY WITH EFFECTIVE PART-TIME PROGRAMS

Firms are becoming increasingly aware that they need to pay closer attention to costs. Recent figures indicate that, on average, it costs a firm at least \$200,000 to replace a second-year associate. This means that every time five associates walk out the door, the firm loses a million dollars.

To make matters worse, these associates often have to be replaced several times **and** the associates often leave before they become profitable. At the new high associate salaries, law firms typically are in the red until a new lawyer's third or fourth year of practice. By that time, however, close to half the new lawyers are gone. A 1998 study by the National Association of Law Placement Foundation found that one in four associates leaves within his or her first two years, and 43 percent leave within three years.

Most D.C. law firms have responded to the high attrition rate by increasing associate salaries, which necessitates an increase in billable hours requirements for associates. Sociological research suggests, however, that this spiral of salaries and hours will actually **decrease** retention rather than increasing it. Why?

Studies of Generation-X employees show that they are much less willing than the baby boomers to "give their all" to their employer. Many saw their fathers give up everything for firms that later fired them. Compared to today's baby-boom partners, Gen X-ers are less likely to be men married to stay-at-home wives or to women who work part-time and handle virtually all household matters. Many Gen-X lawyers, men as well as women, do not want to raise their children in absentia. Many have elder care responsibilities as well. This leads to high attrition in an environment where the "legal work week makes [such] dramatic demands on the practitioner's time [that it is] difficult or nearly impossible to have a life in which family obligations and other non-work activity may be experienced in a conventional way," to quote sociologist Cynthia Fuchs Epstein's influential study of New York law firms.

The evidence that reduced hours and flexible work schedules are the keys to retention is mounting. A recent study by Catalyst revealed that 45% of women cite work/life balance as a top reason for selecting their current employer, with 34 % of men agreeing. An American Management Association survey of 352 companies found that employers reported more success in retaining employees by "giving them a life" than by offering more cash, according to Wall Street Journal columnist Sue Shellenbarger (9/22/99). Another study by Harris Interactive and the Radcliffe Public Policy Center found that slightly over 70 percent of men in their twenties and thirties (in contrast to only 26 percent of men over 65) said they would be willing to take lower salaries in exchange for more family time (The Washington Post 5/3/00).

Focusing on lifestyle goals is particularly important for retaining women. Labor statistics demonstrate that 90% of women become mothers, and 92% of mothers work 49 or fewer hours a week during their key career advancement years, ages 25-44. In effect, this means that traditional law firm work that regularly requires more than 50 hours per week (and often more) systematically excludes most women.

Law firms that want to remain economically viable cannot continue to design work around the idea that attorneys should be able to work as many hours as there are in a day. The challenge for law firms is to help attorneys find that balance without becoming second-class citizens at the firm. Firms need to establish viable reduced-hours career paths that are not stigmatized as "mommy tracks" but rather allow attorneys to have professionally rewarding careers, including partnership. In view of the economics of attrition, this is not an option; it is a necessity.

KEY FINDINGS: CURRENT PART-TIME POLICIES

Background

According to a recent survey by NALP, 98.5 % of the largest law firms in the District of Columbia offer some type of part-time program. Typically, according to information gathered by the Project, the programs offer a reduction in an attorney's billable hours on a weekly or yearly basis, with a proportional reduction in salary. Some firms base their attorneys' part-time schedules on the total number of hours worked and not just hours billed, but they are in the minority. At many firms, "part-time" means 40 hours or more per week; an 80% schedule at a firm that has a full-time annual target of 2000 billable hours requires working more than 40 hours per week to reach the part-time 1600 billable hours target. Only 50% of the largest D.C. law firms will hire attorneys on a part-time basis, again according to NALP; the rest require an attorney to spend some minimum amount of time in full-time practice before a proposal for part-time work will be considered. The largest firms in the District of Columbia do not formally remove part-time associates from the partnership track, but few have good track records of making part-time associates partner. Both NALP and the Project found that usage rates for part-time programs at D.C. law firms is low. NALP statistics show that only 2.6% of partners and 4.8 % of associates work part-time.

Key Findings

1) **Communication gaps hinder part-time work.** The Project's investigators consistently found a significant communication gap between law firm management (used here to mean law firm managing partners, professional human resources managers, and supervising attorneys) and attorneys who are interested in reducing their hours. The keenest disconnect between managers and attorneys concerns the efficacy of part-time programs. In interviews, law firm managers consistently spoke of their part-time programs in glowing terms. They viewed part-time work as a "problem" they had solved and identified one or two satisfied female attorneys who were working a reduced schedule for child rearing purposes as evidence of the program's success. Many attorneys from these same firms, however, expressed deep dissatisfaction with the part-time programs. They stated some or all of the following: working part-time is highly stigmatized; part-timers are viewed as less committed to their work; working part-time means removal from the partnership track; plum work assignments, client contact,

business development opportunities, mentoring, pro bono availability, continuing legal education courses, and other aspects of law practice dry up once one ceases to work full-time; and part-timers are required to work extra hours to the point that some are back working full-time hours for part-time pay. The attorneys do not feel comfortable expressing their dissatisfaction to law firm management for fear of diminishing their reputation as a "team player" or otherwise hurting their chances for advancement. Instead, they choose either not to work part-time and leave the law firms for a better schedule, or to try part-time and then leave the law firms, sometimes bitter and disillusioned, when the part-time schedule doesn't work out.

2) **“Part-time” schedules often require 40 or more hours of work per week.** The ABA Career Satisfaction Survey (2000) showed 46.8 % of associates at large firms nationally work more than 60 hours per week, which translates into a 48-hour week for a typical 80% “part-time” schedule. Even at firms where associates bill an average of 2,000 hours per year – as is common in the District of Columbia – part-time attorneys work about 40 hours per week to make their billable targets. Such a “part-time” schedule will not be effective in retaining attorneys.

3) **At many firms, part-time attorneys are ineligible for partnership.** Part-time associates are rarely made partner in D.C. law firms. Some firms have a formal policy that prohibits partnership consideration for attorneys working less than full-time. In other firms, formal eligibility for partnership requires that attorneys be working full-time at the time of the partnership decision and/or to work full-time once made a partner. In still others, part-timers are eligible in theory, but no or few part-timers have ever been made partner.

4) **Overt stigmatization penalizes part-time attorneys.** Part-time work is so stigmatized at D.C. law firms that many attorneys who wish to reduce their hours leave their firms rather than jeopardize their legal careers. Attorneys report, and some law firm managers candidly acknowledge, that professional advancement suffers or is halted outright for part-time attorneys. The reported evidence of stigma includes formal removal from the partnership track for the duration of the part-time schedule; relocation from a practice area deemed not compatible with part-time work to a more "suitable" practice area; refusal of some partners to work with part-time attorneys; ineligibility for bonuses and other perks; depressed wage rates for part-timers who are paid by the hour or pay that is not proportional with schedule (*e.g.*, 80% of full-time work and 70% of full-time pay); and loss of office and/or secretarial support.

5) **Attorneys are subtly discouraged from working part-time.** Part-time work appears to be discouraged at D.C. law firms in additional ways. The Project's investigators heard occasional reports of attorneys being warned directly not to work part-time or their careers would suffer, but most reports of discouragement were more subtle. These included de facto removal from the partnership track (firms that do not formally remove part-time attorneys from the track nevertheless informally remove them where the firms have rarely or never made a part-time associate a partner); lack of part-time partners who could serve as role models and/or mentors; loss of challenging assignments; removal from firm administrative committees; comments by supervisors, coworkers, or assistants about "working banker's hours"; and disregard of part-time attorney's schedule when setting meetings or deadlines.

6) **Schedule creep undermines part-time programs.** At many D.C. law firms, attorneys leave part-time positions because they find their part-time schedules gradually increasing back to full-time. The result is that "part-time" attorneys not infrequently find themselves working full time for part-time pay. Firms sometimes compensate part-timers for the extra hours worked, which is better than not doing so — but the fact is that if part-time attorneys wanted more pay rather than more time, they would not have reduced their hours in the first place. Schedule creep is almost always caused by the failure to adjust the part-timer's case load to match the shorter work hours. There is often an unspoken expectation on the part of the firm that the attorney will continue to do the same amount of work, and a corresponding desire on the part of the attorney to prove that he or she is still a valuable team member who can pull his or her own weight.

7) **Firms' policies are often unwritten or are vague.** Many firms either have no written part-time policies, or have policies that are vague or closely guarded. Some firms have written policies, but the actual practice of part-time work at the firms differs from the written policy. One unexpected finding is that, where policies are vague or unwritten, male attorneys have had trouble gaining access to information about part-time. Similarly, some male attorneys have found that they were given different information than female attorneys about part-time arrangements.

8) **Part-time schedules work well for some people.** Despite the significant problems experienced by many part-time attorneys, some feel their part-time schedules have worked out well. Even attorneys who are not entirely satisfied with their firm's part-time program often feel that working part-time is far better than the available alternatives of either quitting entirely or never seeing their children awake (or failing to fulfill other important family obligations or other personal goals). The happiest part-time attorneys appear to be those who have flexibility both inside and outside the office, are respected for the quality of their work and their contribution to their firms, and have direct responsibility for their cases with corresponding control over their scheduling.

9) **Area of practice does not bar reduced-hours schedules.** While it is often said that a particular type of practice is not amenable to part-time work (such as litigation or mergers and acquisitions), the Project's investigators found attorneys successfully practicing part-time in many areas – including litigation and mergers and acquisitions. Skepticism about the feasibility of part-time stems from the assumption that "part-time" always means a schedule where an attorney leaves at 3 p.m. or works only three days a week. While such a schedule is often feasible, where it is not feasible, alternatives exist. One alternative is for attorneys to take fewer cases or fewer clients. Another alternative is to define "part-time" on an hours-per-year basis, where part-timers work full-time when their cases are "hot," and take comp time when they are not. Defining reduced hours in terms of a given number of hours per year rather than a certain schedule each week should be easy in a profession that already defines commitment levels in terms of hours per /year. The key issue is whether reduced-hours attorneys actually feel free to leave work when the demands of a particular case diminish – or whether informal expectations preclude them from doing so.

10) **Firm managers have concerns about client service.** In interviews with Project investigators, law firm managers expressed concern about the ability of part-time attorneys to

provide quality client service. They feel pressure from an increasing number of clients for around-the-clock availability. Their concerns included part-time attorneys not being able to meet deadlines; client calls not being answered or returned promptly by attorneys who are not in the office; part-time attorneys not being available for emergencies; and the potential inability to meet client needs if every attorney decides to work reduced schedules. A partial response to these concerns is flexibility; part-time attorneys need to plan explicitly how they can be available to respond to clients and handle emergencies when they are not in the office. Technology makes this easier, and some firms provide personal organizers, cell phones, laptops, and fax machines to their attorneys. A number of part-time attorneys reported that they promptly return client calls when they are not in the office – and clients do not know if the attorneys are calling from the playground. Another partial response is a team approach to staffing cases, which some firms are already discussing as a way to meet demands for availability in different time zones 24/7 without wreaking havoc on attorneys' lives. Finally, it must be recognized that a high turnover rate for attorneys also damages client relationships and it is therefore in everyone's interest to make part-time schedules work well.

THE NEXT REPORT — SOLUTIONS

PAR's final report will include benchmarks for assessing the effectiveness of a firm's current part-time program, recommendations for setting up an effective reduced-hours program, and a model policy. Its anticipated release date is the end of May, 2001. Copies may be requested by sending an email to report@pardc.org, or may be downloaded from the PAR website, www.pardc.org.

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Feedback about this report is welcomed. Please send comments to interim@pardc.org.

Appendix B

MODEL BALANCED HOURS POLICY

Introduction

Our Firm's strength is derived from its diverse and deeply talented group of attorneys. As a firm, we are committed to maintaining and promoting our diversity and talent. A key way for us to demonstrate our commitment is to recognize that our attorneys have responsibilities and interests outside the Firm that need to be supported and that these responsibilities and interests will affect our attorneys' work schedules.

Balanced hours schedules are available to our attorneys as one way of supporting their lives outside the office. (Similar schedules are available for staff, as set out in the staff manual.) Balanced hours schedules are individually tailored reduced hours schedules designed to meet the needs of the attorney and the needs of the Firm and its clients. Requests for balanced hours schedules will be considered in light of the business needs of the Firm and the Firm's clients, and will be granted whenever possible. The Firm believes that balanced hours schedules should not affect an attorney's professional development or ability to provide professional service to the Firm, clients, the bar, and the community.

This policy sets forth the procedure for proposing a balanced hours schedule, and the general guidelines applicable to balanced hours schedules. Questions about the policy or its application should be directed to the Balanced Hours Coordinator.

Expectations

The Firm expects all of its attorneys to provide professional and prompt service to clients. It also expects all of its attorneys to provide pro bono services in accordance with the Firm's policy, continue their legal education, engage in business development, participate in bar activities, and share in Firm administrative and managerial duties. Balanced hours attorneys should anticipate and meet these expectations.

Flexibility

Meeting client needs often requires flexibility in scheduling, and all attorneys are expected to be flexible in their scheduling when necessary. The Firm will not expect balanced hours attorneys to work in their off-hours on a regular basis, but it may be necessary from time to time for a balanced hours attorney to come into the office or work from another location when not scheduled to do so. When this happens, every effort will be made to provide the attorney compensatory time off within the same pay period as the non-scheduled work. If it is not possible for the attorney to take compensatory time off, the attorney will be compensated in accordance with the compensation guidelines of this policy.

Availability and Duration

Balanced hours schedules are available to all attorneys, assuming an acceptable proposal is made. There is no minimum length of time that an attorney must work full-time before a balanced hours request will be considered. The Firm recognizes that attorneys' schedules will change over time, and understands that balanced hours attorneys may wish to return to standard hours schedules or to stay on balanced hours indefinitely. Changes will be accommodated, again assuming an acceptable proposal is made. There is no minimum or maximum length of time an attorney may work a balanced hours schedule.

Schedules

Balanced hours schedules are to be tailored to meet the individual needs of attorneys. The schedules may include fewer hours per week, month, or year. [The Firm finds that beneficial continuity of service to clients generally requires attorneys to work at least 50% of a standard hours schedule, but proposals to work less than 50% will be considered.]

The schedules should be described in terms of percentage of a standard hours schedule, which for these purposes is defined as [1800] billable hours and [400] nonbillable hours. [Note: for firms without billable or other hourly requirements, the standard schedule can be determined by averaging the attorney's own work hours over a several-year period or over his or her entire career with the firm.] Balanced hours schedules are to include both billable and nonbillable time in proportion to the billable and nonbillable hours the attorneys worked when on standard schedules. (For new hires, the Balanced Hours Coordinator will suggest a ratio based on a typical attorney's experience at the Firm.)

Balanced Hours Proposals

An attorney wishing to work a balanced hours schedule should first explore the types of balanced hours schedules worked by other attorneys in the Firm and elsewhere, and determine what type of schedule would best suit their individual needs. Information about balanced hours schedules is kept by the Balanced Hours Coordinator and is available on the Firm's intranet. The attorney should work with the Balanced Hours Coordinator to complete the pre-proposal questionnaire, which covers topics such as how the attorney will accomplish his or her work and how the attorney will be available for emergencies, and draft the proposal. Draft proposals should be reviewed by the Balanced Hours Coordinator and submitted to the attorney's supervising attorney(s) and practice head. The supervising attorney(s) and practice head will be asked to consider various factors relating to how work will be performed under the proposed balanced hours schedule. The Firm anticipates that if the supervising attorney(s) and/or practice head have objections to the proposal, they will discuss the objections and suggest revisions to the attorney. The practice head will forward it, with his or her recommendation as to approval, to the Management Committee for final consideration.

Compensation

Associates and counsel working balanced hours schedules will be compensated proportionally to standard hours attorneys of their same class year. For example, an associate working 80% of a standard hours schedule will earn 80% of the standard hours salary for an associate in her same class. [Associates and counsel working less than 50% of a standard schedule may be compensated on an hourly basis, if the Balanced Hours Coordinator and their practice heads determine that hourly compensation is more feasible.]

Partners will be compensated in accordance with the recommendations of the Compensation Committee, which will determine the partner share of a balanced hours attorney as if the attorney were working a standard schedule and then adjust the share amount to reflect the proportion of hours worked. Compensation based on business origination credits will be paid at full rates, and not adjusted proportionally.

Balanced hours attorneys remain eligible for bonuses, which will be awarded in proportion with the attorneys' schedules. For bonuses based on the number of hours over target worked, balanced hours attorneys will receive bonuses based on the number of hours over their balanced hours schedule worked.

Benefits

Balanced hours attorneys remain eligible for the same benefits as standard hours attorneys[, except that attorneys working less than 50% or less than 25 hours per week are ineligible for medical, dental, life, and disability insurance as stated in the Firm's policies]. [Balanced hours attorneys are eligible for the same benefits as standard hours attorneys, pro-rated to reflect the proportion of a standard schedule the balanced hours attorney is working. For example, if a balanced hours attorney works 80% of a standard schedule, the firm will pay 80% of the premium for his or her health, dental, life and disability insurance and the balanced hour attorney will be responsible for the remainder of the premium.]

Technology

The Firm provides all attorneys with an annual stipend for use in purchasing work-related technology. The stipend may be used for such things as cellular telephones and service, Blackberries, fax machines, second phone lines, and computers. Balanced hours attorneys are urged to consider their needs for communicating with the office and with clients when deciding how to use their stipend. At a minimum, a fax machine and cellular telephone should be purchased. If additional stipend amounts are needed, the Firm will consider advancing the additional amounts against the next year's stipend.

Assignments

Balanced hours attorneys will receive the same types of assignments as standard hours attorneys, adjusted to take work hours into account. Balanced hours attorneys will not receive a

disproportionate amount of routine work. The Balanced Hours Coordinator will review the type of work done by balanced hours attorneys to ensure compliance with this guideline.

Partnership Track

The Firm evaluates its associates and counsel regularly to ensure they are performing at a level that makes them eligible for partnership. Factors considered include, but are not limited to, quality of work, quality of relationships with clients and colleagues, skill development, and ability to attract new business. Working a balanced hours schedule does not change the evaluation process or the factors considered, and balanced hours associates and counsel remain eligible for partnership. Working a balanced hours schedule may extend the time at which an attorney is considered for partnership, depending on the proportion of standard hours worked and the duration of the balanced hours schedule. For example, an associate who works a standard schedule for six years and an 80% of standard schedule for two years is likely to be considered with other associates of his class, but an associate who works a 60% schedule for six years will likely find his partnership track extended by two or more years.

Periodic Reviews

The success of each balanced hours schedule will be reviewed with the attorney, Balanced Hours Coordinator, and the attorney's supervisor(s) every three [six] months. If changes to the schedule are necessary, they will be made in writing. In addition to the six-month reviews, the attorney and his or her supervisor(s) are encouraged to communicate with each other and/or the Balanced Hours Coordinator on an ongoing basis about issues that arise regarding the schedule. The Balanced Hours Coordinator will review the hours worked by balanced hours attorneys and will address consistent excessive hours with the attorney and the attorney's supervisor(s) on an ongoing basis.