



THE LAW SOCIETY OF UPPER CANADA

**GUIDE TO DEVELOPING A POLICY
REGARDING
FLEXIBLE WORK ARRANGEMENTS**

Updated March, 2003

INTRODUCTION

The purpose of this Guide is to assist law firms to accommodate needs that arise from family responsibilities and disability. The duty to accommodate is an obligation under the *Human Rights Code* and under the *Rules of Professional Conduct*. The following introductory material summarizes relevant background studies, discusses law firms' legal and professional responsibility to accommodate family responsibilities and disability within employment, and lists some of the benefits of flexible work arrangements to law firms.

WHY LAW FIRMS NEED WRITTEN POLICIES

The Ontario Human Rights Commission has stated that “[t]he best defence against human rights complaints is to be fully informed and aware of the responsibilities and protections included in the *Code*.¹” It is now well established that the adoption of effective policies and procedures to promote equity and diversity and the design and delivery of education programs for employees and members of employment organizations such as law firms have the potential of limiting harm and consequently reducing liability of employers².

It is advantageous to a firm to adopt written policies for a number of reasons:

1. Written policies encourage respect for the dignity of all staff and members of the law firm.
2. Written policies show that the law firm’s management takes seriously its legal and professional obligations.
3. Many firms have provided flexible work arrangements for some time but have done so on an *ad hoc* basis. Written policies ensure that everyone has access to the criteria according to which an arrangement will be granted. Written policies also spell out the range of options available.
4. Relying on an *ad hoc* system often causes concern among members of the firm about whether decisions are being made on an even-handed, consistent basis. Written policies remove much of the discretion that can otherwise play a part in decision-making. It allows members of the firm to anticipate how a proposal for a flexible work arrangement will be received, and thereby encourages members to come forward with a proposal rather than assuming that their only option is to leave the firm.

¹*Policy and Guidelines on Disability and the Duty to Accommodate* (Toronto: Ontario Human Rights Commission, November 23, 2000) at 41.

² For example, see *Ferguson v. Meunch Works Ltd.* (1997), 33 C.H.R.R. D/87 (B. C. H. R. T.).

5. Written policies on equity issues encourage respect for and acceptance of staff and members of the law firm from a diversity of groups, such as those protected under the *Ontario Human Rights Code* and the *Rules of Professional Conduct*. In the context of employment, the *Human Rights Code* protects against harassment and discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, same-sex partnership status or disability. The *Ontario Human Rights Code* and the *Rules of Professional Conduct* also impose a duty to accommodate.
6. The existence of written policies allows the law firm to communicate its commitment to equity principles to people outside of the law firm, such as prospective recruits and clients.
7. Written policies minimize the risk of workplace harassment or discrimination and of harm to individual employees, as well as the risk that a law firm will be held liable for such unlawful harassment or discrimination.
8. Written policies may provide the necessary focus for education programs on preventing and responding to workplace harassment and discrimination.

BARRIERS TO EQUALITY IN THE LEGAL PROFESSION

In most professions, there is evidence that equality-seeking communities face serious barriers to equality. The legal profession is no exception. Since 1989, the Law Society of Upper Canada has undertaken and reviewed studies that are indicative of inequality within the profession:

1. Statistics analysed by the Law Society's Special Committee on Equity in Legal Education and Practice in 1990 indicated that racialized communities were seriously under-represented in the legal profession in relation to their populations in Ontario³.
2. In 1991, the Law Society published a survey of lawyers called to the Bar between 1975 and 1990⁴. Seventy percent of women respondents said they experienced sex discrimination in the course of their work as lawyers. Ten percent of the respondents reported having personally experienced racial or ethnic discrimination in the course of their work as lawyers and seventeen percent reported occurrences of racial or ethnic discrimination against others.
3. A 1992 survey of Black law students, articling students and recently-called lawyers sponsored by the Law Society⁵ found that fifty percent of respondents thought they were channelled into particular areas of practice or types of law. Fifty-nine percent of respondents to the 1992 survey believed that certain areas of practice were effectively closed to Black lawyers. The areas of law

³ Report of the Special Committee on Equity in Legal Education and Practice adopted by Convocation in February 1991.

⁴ *Transitions in the Ontario Legal Profession, A Survey of Lawyers Called to the Bar Between 1975 and 1990* (Toronto: Law Society of Upper Canada, 1991).

⁵ Felix N. Weekes and A. Elliot Spears, *Survey of Black Law Students, Black Articling Students, and Recently Called Black Lawyers* (Toronto: Law Society of Upper Canada, July-August 1992).

cited most often as not being open to Black lawyers were corporate/commercial law and related areas of business law such as securities and taxation.

4. In response to complaints from students in 1992, the Law Society conducted a survey of students in 1993 and 1994 concerning inappropriate comments made and questions asked at articling interviews. Students reported that they were asked questions and subjected to offensive remarks concerning age, sex, family status, parenting obligations, sexual orientation, heritage and country of origin, among others.
5. The 1993 report of the Canadian Bar Association's Task Force on Gender Equality in the Legal Profession, *Touchstones for Change: Equality, Diversity and Accountability*⁶ describes the barriers to equality faced by women in the legal profession. It also demonstrates that these barriers are multiplied for women who face additional forms of discrimination on the basis of race, ethnic origin, sexual orientation or disability. The report urges the profession to remove the barriers and, as one way of doing so, recommends the adoption of model employment policies.
6. In 1996, the Law Society published *Barriers and Opportunities Within Law*, a longitudinal study that compared the success of male and female lawyers called to the Ontario Bar between 1975 and 1990. The report once again confirmed the existence of inequality within the legal profession⁷.
7. The Law Society Placement Office surveys for the years 1994-1995 through to 1998-1999, and for 2000-2001 of incoming bar admission course students revealed that Aboriginal students, racialized students and students with disabilities were over-represented among students who were without articling placements as of September of the year in which they would be expected to commence articles.
8. The Discrimination & Harassment Counsel program, established by Convocation in 1999 to provide services to individuals who allege harassment or discrimination by a lawyer, has reported receiving 582 calls, representing 469 individuals, within 14 months of operation. The overwhelming number of calls received fell within the mandate of the program⁸.
9. In February 2000, the Council of the Canadian Bar Association approved unanimously the report entitled *Racial Equality in the Canadian Legal Profession* which describes significant barriers that prevent people from certain racialized communities from becoming members of the legal profession. It notes that lawyers from racialized communities are often denied opportunities to move up the corporate ladder to partner or senior management positions. The report also examines how "systemic racism permeates the culture of the legal profession, frustrating its best efforts to render justice"⁹.

⁶Canadian Bar Association, *Touchstones for Change: Equality, Diversity and Accountability* (Ottawa: Canadian Bar Association, 1993).

⁷F.M. Kay, N. Dautovich and C. Marlor, *Barriers and Opportunities Within Law: Women in a Changing Legal Profession. A Longitudinal Survey of Ontario Lawyers 1990-1996* (Toronto: Law Society of Upper Canada, November 1996).

⁸Discrimination & Harassment Counsel, *Discrimination & Harassment Counsel Program* (Toronto: Law Society of Upper Canada, December 2000).

⁹Introductory statement by Professor Joanne St. Lewis, Co-Chair of the Working Group on Racial Equality in the Legal Profession in *Racial Equality in the Canadian Legal Profession*, (Ottawa: Canadian Bar Association,

10. In 2001, the Law Society commissioned Michael Ornstein, Director of the Institute of Social Research of York University, to prepare a demographic survey of the legal profession in Ontario¹⁰. Using the 1996 Canadian Census, the report shows that 7.3 percent of lawyers in Ontario are non-white, compared to 17.5 percent of the population. Although in 1996 30.1 percent of lawyers in Ontario were women, only 7.8 percent of lawyers between 55 and 64 and 18 percent of lawyers between 45 and 55 were women. The report also notes that the mean annual earnings of non-white lawyers and of women is generally much lower than the mean annual earnings of white male lawyers.

In light of the above-noted studies, the Law Society has undertaken initiatives to promote equality within the legal profession, in accordance with its mandate. The position of the Law Society has been summarized in its *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*¹¹.

MODEL POLICIES DEVELOPED BY THE LAW SOCIETY

In the last decade, the Law Society has adopted a number of model policies to promote equality within the legal profession. In 1996, the Law Society of Upper Canada adopted the *Guide to Developing a Policy Regarding Workplace Equity in Law Firms*¹² (updated in March 2003) and the present *Guide to Developing a Policy Regarding Flexible Work Arrangements* (updated in March 2003). The policies are adaptations of the model policies created by the Canadian Bar Association Task Force on Gender Equality in the Legal Profession, and are updated and tailored to reflect Ontario human rights legislation and the *Rules of Professional Conduct*¹³. The CBA's model policy on alternative work arrangements draws upon two other sample policies: the policy prepared by the American Bar Association's Commission on Women in the Profession, which was published in *Lawyers and Balanced Lives: A Guide to Drafting and Implementing Workplace Policies for Lawyers* (Chicago: American Bar Association, 1990), and the policy prepared by the Women's Bar Association of the District of Columbia entitled *Guidelines on Alternative Work Schedules*.

In 2001-2002, the Law Society of Upper Canada published a document entitled *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with*

2000) at iii.

¹⁰ Michael Ornstein, Director of the Institute for Social Research of York University, *Lawyers in Ontario: Evidence from the 1996 Census, A Report for the Law Society of Upper Canada* (Toronto: Law Society of Upper Canada, January 2001).

¹¹ *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, 1997).

¹² *Guide to Developing a Policy Regarding Flexible Work Arrangements* (Toronto: Law Society of Upper Canada, updated March 2003) and *Guide to Developing a Policy Regarding Workplace Equity in Law Firms* (Toronto: Law Society of Upper Canada, updated March 2003).

¹³ The Canadian Bar Association Task Force prepared model policies on alternative (flexible) work arrangements, parental leave, sexual harassment, and workplace equity which were published (August 1993) as Appendix 2 of the *Touchstones Report*, *supra* note 6. The model policy on workplace equity, in particular those parts dealing with recruitment, interviewing and hiring, drew upon the recruitment guidelines prepared by the University of Victoria Faculty of Law (reproduced in *Gender Equality in the Legal Profession* (Vancouver: Law Society of British Columbia, 1992).

*Disabilities; Legal Developments and Best Practices*¹⁴ which provides best practices and a legal analysis of the duty to accommodate. The Law Society also adopted a *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements*¹⁵ based in part on the Human Rights Commission's *Policy on Creed and the Accommodation of Religious Observances*¹⁶ and *Policy and Guidelines on Disability and the Duty to Accommodate*¹⁷, and the model policy entitled *Preventing and Responding to Workplace Harassment and Discrimination: A Guide to Developing a Policy for Law Firms*.

THE LAW AND PROFESSIONAL RESPONSIBILITIES

Studies such as those cited above suggest the existence of discrimination in the legal profession.

Subsection 5(1) of the *Human Rights Code* R.S.O. 1990, c. H.19 prohibits discrimination in employment:

Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences¹⁸, marital status, same-sex partnership status, family status or disability.

In human rights law, the fact that there is no intent to discriminate may be of no relevance: what counts is the impact or the effect of practices, policies and behaviours on individuals.

Rule 5.04 of the *Rules of Professional Conduct* provides that law firms have a legal and professional duty not to discriminate (on any of the prohibited grounds enumerated in the *Code* and in Rule 5.04):

A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the *Code*), marital status, family status, or [disability] with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other members of the profession or any other person¹⁹.

¹⁴ *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities; Legal Developments and Best Practices* (Toronto: Law Society of Upper Canada, March 2001).

¹⁵ *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements* (Toronto: Law Society of Upper Canada, March 2001).

¹⁶ *Policy on Creed and the Accommodation of Religious Observances* (Toronto: Ontario Human Rights Commission, October 20, 1996).

¹⁷ Approved by the Ontario Human Rights Commission on November 23, 2000 and released on March 22, 2001.

¹⁸ "Record of offences" is defined in the *Code* as a conviction for a criminal offence for which a pardon has been granted or a conviction under any provincial enactment.

¹⁹ Although Rule 5.04 does not prohibit discrimination or harassment based on same-sex partnership status, law firms are bound by the *Code* which includes such ground.

Law firms have a legal and professional duty not to discriminate (on any of the prohibited grounds enumerated in the *Code* and in Rule 5.04) with respect to employment -- which covers recruitment, interviewing, hiring, promotion, evaluation, compensation, professional development and admission to partnership. Discrimination in the practice of law breaches acceptable standards of professional conduct as well as provincial human rights law.

THE LEGAL DUTY TO ACCOMMODATE

The *Code* prohibits adverse effect discrimination resulting from a rule or policy. However, under section 11 of the *Code*, an employer may justify a workplace rule that has the effect of discriminating against a person or group of persons on a prohibited ground, including disability, by showing that the rule is a *bona fide* occupational requirement and that the needs of the person or group cannot be accommodated without undue hardship²⁰.

Section 17 of the *Code* also creates an obligation to accommodate persons with disabilities. Section 17 states that there is no violation of the right of a person with a disability if that person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right. However, this defence is not available unless it can be shown that the needs of the person cannot be accommodated without undue hardship²¹.

When one alleges that a rule or policy is discriminatory, the Supreme Court suggests the following three-step analysis:

²⁰ Section 11 of the *Code* imposes a duty to accommodate:

(1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

(a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or

(b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.

(2) The Commission, the board of inquiry or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

²¹ Section 17 of the *Code* imposes a duty to accommodate persons with disabilities:

(1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of [disability].

(2) The Commission, the board of inquiry or a court shall not find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

Once a plaintiff establishes that the standard is *prima facie* discriminatory, the onus shifts to the defendant to prove on a balance of probabilities that the discriminatory standard is a *bona fide* occupational requirement or has a *bona fide* and reasonable justification. In order to establish this justification, the defendant must prove that:

1. it adopted the standard for a purpose or goal rationally connected to the function being performed;
2. it adopted the standard in good faith, in the belief that it is necessary for the fulfilment of the purpose or goal ; and
3. the standard is reasonably necessary to accomplish its purpose or goal, in the sense that the defendant cannot accommodate persons with the characteristics of the claimant without incurring undue hardship²².

In Ontario, the Court of Appeal has adopted the three-step analysis set out by the Supreme Court of Canada which means that, in cases of *prima facie* discrimination based on disability, an individual may rely on section 11 or 17 of the *Code*. In cases of *prima facie* discrimination based on other grounds, an individual may rely on section 11 of the *Code*. Under either section, to justify workplace related rules or policies, the three steps of the analysis must be satisfied²³.

The commentary to Rule 5.04 of the *Rules of Professional Conduct* also imposes a duty to accommodate:

The Supreme Court of Canada has confirmed that what is required is equality of result, not just of form. Differentiation can result in inequality, but so too can the application of the same rule to everyone, without regard for personal characteristics and circumstances. Equality of result requires the accommodation of differences that arise from the personal characteristics cited in Rule 5.04.

The nature of accommodation as well as the extent to which the duty to accommodate might apply in any individual case are developing areas of human rights law²⁴.

ACCOMMODATION OF FAMILY RESPONSIBILITIES

²² *British Columbia (Public Service Employees Relations Commission) v. B.C.G.S.E.U.*, [1999] 3 S.C.R. 3 (the *Meiorin* case) at par. 54.

²³ *Entrop v. Imperial Oil Ltd.* (2000), 50 O.R. (3d) 18 (Ont. C.A.).

²⁴ The *Code* and the *Rules of Professional Conduct* impose a duty to accommodate differences arising from the personal characteristics up to the point of undue hardship. The duty to accommodate is a legal requirement imposed on employers in Ontario, including law firms. Consequently, law firms are encouraged to adopt policies to prevent and respond to workplace harassment and discrimination and to accommodate employees. The Law Society has published the following documents to assist law firms in developing policies: *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements*, *supra* note 15; *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities*, *supra* note 14; *Preventing and Responding to Workplace Harassment and Discrimination: A Guide to Developing a Policy for Law Firms*; *Guide to Developing a Policy Regarding Flexible Work Arrangements*, *supra* note 12; and *Guide to Developing a Policy Regarding Workplace Equity in Law Firms*, *supra* note 12. Further, staff of the Law Society are available to assist in the development of an accommodation policy for your law firm either by phone or by attending at your offices.

Family responsibilities arise mainly out of the parent-child relationship. The responsibilities that most affect the workplace arise from the birth or adoption of children, and the need to care for children and elderly parents and other relatives.

Historically, lack of accommodation of family responsibilities in the legal profession has had the greatest adverse impact on women. The “culture” of lawyers' workplaces was shaped for and by a profession exclusive of women. The components of the culture include: long and irregular hours of work; assumptions about the availability of domestic labour to support a lawyer’s activities at work; and promotional policies based on an extremely long working day and the maintenance of large numbers of billable hours as well as increased responsibility. The culture of the workplace assumed that a lawyer would not have family responsibilities requiring significant time commitments. In turn, that workplace culture reflected a surrounding culture in which women were expected to take responsibility for all of the domestic labour arising out of family responsibilities.

The following are some of the negative consequences experienced by women in the legal profession who have children:

- Loss of income.
- Limitations on advancement.
- Delay in promotion/admission to partnership.
- Segregation into less remunerative and "low profile" areas of practice.
- Difficulty in obtaining access to higher profile files.
- Unwillingness on the part of employers and colleagues to accommodate the demands of family responsibilities.
- Questioning and testing of commitment to work.

There has been some societal change, to the extent that more men are taking on work that arises from family responsibilities. However, this change is slow to create real difference, and the burden of family responsibilities continues to fall predominately on women²⁵. Lack of accommodation therefore remains a sex discrimination issue, in addition to having a discriminatory impact on the ground of family status.²⁶

ACCOMMODATION OF DISABILITY

Disability is defined for the purpose of Ontario's Human Rights Code and Rule 5.04 as follows:

²⁵ This fact was recognised by the Supreme Court of Canada in *Symes v Minister of National Revenue*, (1993), 161 NR 243 (SCC)

²⁶ "Family status" is defined in the Ontario *Human Rights Code* RSO 1990, Chap H-19, s. 10 as "the status of being in a parent and child relationship".

“On the basis of disability” means for the reason that the person has or has had, or is believed to have or have had:

- a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- b) a condition of mental impairment or a developmental disability,
- c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- d) a mental disorder, or
- e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*.

Disability may be the result of a physical limitation, an ailment, a social construct, a perceived limitation or a combination of all these factors. The focus is on the effects of the distinction, preference or exclusion experienced by the person and not on proof of physical limitations or the presence of an ailment²⁷.

A person can start his or her employment career with a disability, or can become disabled at any time during that career, so the need for accommodation of disability can arise at any time, for anyone in the firm.

A FLEXIBLE WORK ARRANGEMENT POLICY AS ONE WAY OF FULFILLING THE LEGAL DUTY TO ACCOMMODATE

The adoption of any specific flexible work arrangement policy is not legally mandatory. However, a law firm has a legal duty to accommodate members of the firm, as well as qualified candidates for employment) where personal characteristics cited in Rule 5.04 and the *Human Rights Code* make it difficult to meet all of the requirements imposed by the firm. One way to accommodate is to offer flexible work arrangements. The adoption of a flexible work arrangement policy will assist law firms to meet their legal duty to accommodate. The adoption of a flexible work arrangements policy encourages new ways of practising law that benefit everyone in the firm. It is also designed to ensure equal opportunities within the law firm.

²⁷ Case law has found that the term disability includes alcoholism, cancer, AIDS, hypertension, back pains, diabetes, injuries, allergies and asthma, depression and anxiety, cerebral palsy, malformation of fingers and developmental disability.

There are many methods by which law firms can accommodate the needs of members with disabilities or those who have family responsibilities. The methods may vary with the size and resources of a law firm. The adoption of a flexible work arrangement policy is one method. Law firms may wish to consider other methods of accommodation, including:

- Family leave policies, which acknowledge and respect the need for leave of absence for reasons of childbirth or adoption, as well as other incidents of intensive family needs such as disability or serious illness within the family. Such policies provide appropriate time frames and compensation and permit members of the firm to return to work without reduction in compensation, seniority or quality of work assignments.
- Assistance with childcare, such as provisions for childcare at the workplace, childcare referral services, assistance with childcare fees and provision for emergency childcare needs.
- Assistance with elder care, which may include elder care referral services, assistance with elder care fees and provision for emergency elder care needs.
- Removal of physical barriers that make it more difficult for persons with disabilities to gain access to the workplace or function within it.
- Making all in-house communications (eg: policies, memos, manuals produced by the firm) accessible to all members of the firm.
- The provision of staff to assist firm members with disabilities as necessary (eg: the services of a staff person to read documents, unpublished decisions, etc, that are not otherwise accessible to some lawyers with disabilities, assistance with off-site work-related activities, such as attendance at a hearing).
- The provision of assistive devices that make it easier for persons with various disabilities to perform the tasks essential to a legal practice, at the workplace or at a home office.

WHAT ARE FLEXIBLE WORK ARRANGEMENTS?

Flexible work arrangements include a wide variety of scheduling options that differ from the regular office hours expected in a workplace. Compensation can be modified where appropriate.

Arrangements of this kind may be full-time or part-time. They may provide for full-time hours, with flexibility in respect of the hours or days at which work is undertaken ("flexitime"). They may provide for work to be done at the office or at another location ("flexiplace"). One or more people can be involved in a particular arrangement.

Technology increasingly allows a "flexiplace" arrangement without detriment to the work of the firm. For example, telephone lines and computer linkages between home and office can allow calls

and e-mail messages to be transferred to the lawyer at home without the client being aware that the lawyer is working at a home office.

Voice mail or administrative assistants may take phone messages and screen calls when required. The availability of technology to allow "personal video conferencing" adds even more flexibility as to choice of working site.

The most suitable arrangements for a particular firm often depend on its size, the type of law practised, the resources available, the individuals involved, the location of the firm, client characteristics and the current economic situation.

A flexible work arrangement can be tailored to the needs of both members and clients of the firm. For example,

- a flexitime or flexiplace arrangement could include the requirement that the lawyer or staff person involved be in the office during peak hours or during periods when back-up coverage is not available;
- a lawyer could be given responsibility for a particular file, project, or transaction, or for a specified number of billable hours per year.

With proper planning, flexibility and commitment, all parties involved in a flexible work arrangement can benefit.

THE BENEFITS OF A FLEXIBLE WORK ARRANGEMENT POLICY

Flexible work arrangement policies create new choices for all members of the firm. The implementation of flexible work arrangement policies acknowledges the realities of the modern workplace. Male as well as female working parents increasingly expect to play an active role in child rearing. With the aging of the population, most of us face the likelihood that our parents will require some care. Advances in medicine and in technology allow for the practice of law by many who previously would have found this impossible. A firm that recognizes and responds to these new realities will enhance its ability to recruit and retain lawyers of its choice. The costs of recruitment and training can as a result be reduced, and lower turnover among lawyers means better realization of the firm's investment in its intellectual capital. The firm develops a reputation as progressive.

Benefits include the following:

- Members of the firm have the obvious advantage of being able to schedule their lives to facilitate family responsibilities.
- Absenteeism is reduced.
- All members of a firm can work to their full potential.

- Firms gain from the improved morale and loyalty encouraged by the arrangements.
- Firms may reduce fixed costs by allowing office sharing and sharing of secretarial facilities.
- Some reports show that lawyers on reduced hours are more productive than lawyers on regular schedules. They have a strong incentive to learn more efficient ways of working; their ratio of billable hours to total hours worked increases.

It is sometimes suggested that flexible scheduling is suitable only for larger firms. Small firms, however, have provided these arrangements for some time, and may find that they can attract lawyers and other staff away from larger firms by offering flexible work arrangements.

In considering whether to introduce flexible work arrangements, some firms may be concerned that too many members of the firm will want reduced work schedules. This is unlikely; most individuals desire a full-time salary.

Sometimes, doubts are raised about the commitment of lawyers and other members of the firm who choose reduced schedules. It should be recognized, however, that for some individuals, it is a choice between a *flexible* work arrangement or leaving the firm. Individuals who request flexible working arrangements usually have compelling reasons for doing so; this does not mean, however, that their commitment to their work is reduced.

FLEXIBLE WORK ARRANGEMENTS FOR PARTNERS

There may be initial objections to the concept of partners taking advantage of flexible work arrangements. Most of such objections are based on the myth that any reduction of working hours signals a reduction in commitment to the firm. It is therefore important to reiterate that the fact that a person has commitments outside the practice of law does not imply that person is not a fully-committed lawyer.

Flexible work schedules are not a new phenomenon. It is not uncommon for partners to work on flexible schedules so as to accommodate interests in politics or business.

The recommended policy does not specify details for partners. Although firms are encouraged to provide such arrangements for partners, individual firms may wish to develop their own particular schemes.

Supervision of associates by partners need not be adversely affected by flexible work arrangements. Some re-arrangement of schedules may be required from time to time but this is commonly necessary in any situation where a busy partner supervises an associate.

If the firm wishes to provide for reduced hours among the flexible work arrangements it arranges for its partners, the partnership agreement should be reviewed to determine whether there is any over-

riding prohibition against anything less than full-time status. If necessary, the partnership agreement may have to be amended.

EFFECTIVE IMPLEMENTATION AND REVIEW OF THE POLICY

Establishing a Drafting Committee

The starting point is to establish a committee to draft the policy. The membership of the committee should be diverse. To the extent possible, the committee should be composed of directing minds, partners, associates, and staff of both sexes and of differing age, race, ethnic origin, family status, sexual orientation, and religion, as well as individuals with disabilities. If there are lawyers or individuals in the law firm with expertise in the relevant employment and human rights law, one or more should be included.

It is most important that the committee include respected staff and members of the firm who appreciate the importance of the issues to be addressed and who will be able to communicate these matters to others within .

The composition of the committee is critical to the credibility of the process and the policies produced.

Developing the Policy

Committee members should educate themselves about the applicable law and become familiar with existing firm practices and policies that may be relevant.

A consultative process, which includes diverse staff and members of the firm and others with experience and expertise, should be followed. Flexible workplace and duty to accommodate policies apply to the hiring process and to articling students. Law firms should involve articling students in the consultative process.

The committee should circulate a draft policy throughout the firm for comments. This step is important because it generates support and allows for useful comment. It is important to explain the rationale for introducing such a policy, as well as the effect of the proposed policy on existing arrangements.

Implementing the Policy

The initial presentation of the policy and a clear statement of management support are critical to its success.

Once the policy is adopted, it should be distributed to all staff and members of the firm with a covering memorandum emphasizing the strong support of management.

Individuals charged with implementing and applying the policy should receive special training to ensure that they are well informed of the specifics of 's policy, the law, interviewing techniques and information gathering.

Workshops should be organized to inform all staff and members of the firm about the provisions of the policy and the objectives that it is intended to meet.

The workshops should emphasize the changing demographics of the legal profession and the benefits that can come to the firm from adopting a policy on flexible work arrangements. The workshops should also stress that the duty to accommodate is a legal obligation and is an important value within Canadian society.

Factors that may cause opposition within the workplace should be identified, and discussed frankly. One example is the possibility that reassignment of files may be necessary where a lawyer's flexible work arrangement involves a reduced schedule. At hectic times, regular schedule lawyers may resent the additional work. At times when regular-schedule lawyers do not have sufficient work, they may resent the fact that a reduced-work-schedule associate has not left the firm altogether. These concerns should be recognized and addressed at the outset through discussion of the purposes and goals of the flexible work arrangements policy.

The initial presentation of the policy combined with a clear statement of senior and managing partners' support are critical to its success.

Communicating the Policy

If the law firm has a handbook of policies or if policies are available on-line, the flexible work arrangements policy should be included. If the firm does not have a handbook of policies, or if it does not make its policies available on-line, the firm may wish to distribute copies of the policy directly to each staff and member, and/or post copies of the policy in a common area.

The policy should be made available to all prospective members of the firm at the initial interview stage. Such a practice will make a strong statement about the firm's support for the policy and its objectives. Further, the *Human Rights Code* applies to the provision of terms and conditions of employment, recruiting, application forms, interviews and promotions. Firms may also wish to publicize the existence of the policy in their recruitment materials.

Reviewing, Evaluating and Revising the Policy

A committee of the firm should have the responsibility to review and revise the policy on a periodic basis. The committee will also attempt to identify barriers that might affect staff and members of the firm identified by personal characteristics listed in the *Code*. The first review should take place after there has been sufficient time to evaluate its operation.

The mandate of the committee should include an evaluation of whether the policy has been fairly implemented.

The goal of the review process is to ensure that the policy meets the needs of the firm and of its members and employees.

Individual staff and members of the firm should be encouraged to communicate their comments on the policy to the committee, either on an ongoing basis, or during the course of the review.

The following pages present a precedent for a policy which firms may adapt for their own use. The footnotes contain a more detailed discussion designed to assist those who will be drafting policies within firms. In some cases, a firm may wish to add details or examples from the footnotes to the actual text of its own policy.

The precedent addresses the most common situation: a firm composed of partners, associates, and other staff who are not subject to a collective agreement. Obviously, where a workplace is governed by a collective agreement, modifications may need to be made to the policy, and possibly to the collective agreement but note that a collective agreement may not specifically or by interpretation provide for less protection of the right to be free of discrimination than that provided by the Ontario *Human Rights Code* and the *Rules of Professional Conduct*.

The *Model Policy on Flexible Work Arrangements* is simply that: a model. It is intended to provide guidance, rather than to represent the ultimate or ideal policy. A firm will need to design its own policy, tailoring the recommended model to its own circumstances.

FLEXIBLE WORK ARRANGEMENTS POLICY

1 STATEMENT OF PRINCIPLE

- 1.1 In recognition of its commitment to excellence in the practice of law, as well as its obligations under the *Rules of Professional Conduct*²⁸, [name of firm] offers several flexible work arrangements²⁹.
- 1.2 Our primary purpose in providing flexibility in scheduling is to attract and retain lawyers and other staff whom we value.
- 1.3 We acknowledge that members of the firm have a commitment to their families that does not diminish their equally strong commitment to the practice of law. We also acknowledge the existence of a disability that requires accommodation has no effect on professional commitment. This acknowledgement requires the firm to be as supportive of the professional growth and the opportunities available to those on flexible work arrangements as it would be in the case of those on regular schedules.

²⁸ This policy addresses the provision of flexible work arrangements as one means of fulfilling law firms' legal duty to avoid discrimination on the basis of disability, sex and family status, and to accommodate needs that arise from disability and family responsibilities, to the point of undue hardship. The application of the policy is therefore oriented toward people who have a disability or family responsibilities. The model policy should not be taken to mean, however, that an obligation to accommodate for other reasons noted in Rule 5.04 might not arise, or that other valid reasons for flexible work arrangements do not exist. Individual firms should consider the ways in which other personal characteristics noted in Rule 5.04 might necessitate flexible work arrangements, and be prepared to expand the policy accordingly. A policy tailored to the firm is more likely to win ready acceptance.

There is obvious advantage to the firm in providing a flexible work arrangement for any member of the firm who requests it, as this enhances the ability of the firm to retain good people. The disadvantage relates to long-term planning; the number of lawyer-hours available for clients' work is open to change over time. However, this disadvantage should be considered in context; law firms have never been able to rely on a complete absence of turnover (sometimes sudden) in personnel. By contrast, flexible arrangements will usually be planned well in advance.

It is not realistic to assume that a significant proportion of the lawyers in a firm will wish to implement alternative work schedules at the same time. The reduction in remuneration makes these arrangements unfeasible for most lawyers. However, in the unlikely event that a firm needs to limit the number of lawyers on alternative schedules at any one time, some consideration should be given to what factors might take priority. These will be addressed later in this draft policy.

²⁹ The title chosen for this policy is important. The term "part-time" should be avoided. Flexible work arrangements do not always involve reduced hours. Further, the term is often wrongly associated with reduced commitment to the job. The tone and style of the policy should convey a positive and supportive attitude.

2 RESPONSIBILITIES AND ENTITLEMENTS OF THE FIRM

- 2.1 [Name of firm] will attempt to accommodate all requests for flexible scheduling, recognizing that the interests of the firm, its clients and other members of the firm will need to be considered in each instance, as well as the interests of the flexible schedule individual.
- 2.2 [Name of firm] will make reasonable efforts to encourage all members of the firm to recognize that flexible scheduling is beneficial both for the firm and for the individual member of the firm.
- 2.3 [Name of firm] will expect flexible schedule members of the firm to be available to the firm during unscheduled hours only when absolutely necessary.³⁰
- 2.4 The firm will inform an individual on a flexible schedule promptly if it has any concerns about the way in which the arrangement is working.

3 RESPONSIBILITIES AND ENTITLEMENTS OF THE INDIVIDUAL

- 3.1 An individual on a flexible schedule is expected to communicate promptly with the firm about any concerns or problems with the arrangement.
- 3.2 Flexible schedule lawyers remain committed professionals and are expected to carry out their responsibilities to their clients and to the firm in a professional and competent manner even though that obligation may at times conflict with the flexible work arrangement schedule.
- 3.3 It is imperative that individuals on a flexible schedule demonstrate a reasonable amount of accommodation in regard to unforeseeable needs of the firm. They should be prepared to undertake occasional travel, last-minute work requirements and concentrated periods of work outside the schedule.

³⁰ A common complaint of lawyers and others with reduced-hours arrangements is that they gradually end up working full-time for part-time pay. Although the individual must co-operate to make the arrangement successful, the firm must be careful not to interrupt the arranged schedule too readily. To ensure that the arrangement is fair to all concerned, any reduced-hours arrangement should make it possible for the individual to be compensated for actual hours worked, so that any significant number of hours worked in excess of the agreement does not go unpaid.

4 **WORK ARRANGEMENTS THAT WILL BE CONSIDERED AT [NAME OF FIRM]**

(Six suggested schemes are listed below. In designing its own policy, the firm can choose to include all, some or none of the suggested schemes.)

4.1 **Full-time options**

4.1.1 **Flexitime**

A rearrangement of full-time hours so that the regular day's work begins and ends at times different from most others in the office.

4.1.2 **Compressed time**

A type of flexitime arrangement where fewer but longer days are worked with the result that other days are shorter or not scheduled as work days.

4.1.3 **Flexiplace**

A full-time workload is handled at a location outside the office.

4.1.4 **[Other]**

[Options specially designed by the firm.]

4.2 **Reduced-hour options**

4.2.1 **Reduced work schedule³¹**

Fewer hours are worked than the number required on a full-time schedule. Pay is reduced accordingly.

A reduced work schedule can be structured,

- as fewer hours per day;
- as fewer days per week;

³¹ Reduced work schedules should involve a reduction in the amount but not the quality of the work given to the individual.

- as fewer weeks per year;
- by caseload during a set period; or
- by billable hours during a set period.

4.2.2 **Job-sharing**

A regular, continuing arrangement between two individual members of the firm and a firm in which the individuals agree to share the responsibilities and entitlements of a full-time position.³²

4.2.3 **Job-pooling**

A certain number of jobs are divided between a larger number of people so that each works less than full-time for proportionately less pay.

4.2.4 **[Other]**

[Options specially designed by the firm.]

5 **ELIGIBILITY (ASSOCIATES³³ AND NON-LAWYER STAFF)**

5.1 All associates and non-lawyer staff in any area of practice may submit a proposal for a flexible work arrangement.³⁴

³² Job-sharing offers many benefits to the firm including the combined expertise of two individuals for the salary of one, the possibility of having both persons work during peak hours, the possibility of having both persons being present at meetings, and an easy option for managing vacation or leave times.

³³ The term "associate" is used to mean a lawyer employed by a sole practitioner or a partnership.

³⁴ Any limitations on eligibility should be clearly stated in the policy and evenly applied. If there are none, that too should be expressly stated. All areas of practice will be open to flexible scheduling if the full range of options is considered. It should be noted that the legal obligation to refrain from discrimination on the basis of disability, sex and family status, and to accommodate to the point of undue hardship arises in respect of all employees, associates and partners.

The size of the firm may influence its flexibility. For example, smaller firms may be able to absorb only a limited number of reduced schedule lawyers without undue hardship.

As noted above, it is not realistic to assume that a significant proportion of the individuals in a firm will wish to implement flexible work schedules at the same time. However, in the unlikely event that a firm needs to limit the number of lawyers on flexible schedules at any one time, the factors should be considered:

5.2 A proposed arrangement that can be made without undue hardship to the firm, (considering the work of the firm, its service to clients and its obligations to all its members) will be approved. Where the flexible arrangement involves reduced work hours, and/or working at a location other than within the firm's offices, the arrangement will be subject to the following overriding conditions:

- The individual will remain available to the firm and to clients in busy times or in emergencies.
- The individual will provide a list of hours during which he or she can easily be contacted.
- A contact person at the firm's office will be kept aware of how to contact the individual as required at other times.

5.3 Subject to paragraph 5.4 an individual on an approved flexible schedule may continue the schedule as long as it is necessary. In the event of a demand for flexible schedules so unusually high as to create undue hardship for the firm, new applicants and associates whose

- Since the provision of flexible work arrangements is associated with law firms' obligation to refrain from discrimination on the basis of disability, sex and family status, the firm's policy should stress that persons whose need is related to these personal characteristics are given priority in the provision of flexible work arrangements over those who request such arrangements to pursue a business or political interest, or other interests.

- Among applicants who pursue flexible work arrangements to fulfil family responsibilities, consideration may have to be given to the nature of the applicant's circumstances, and the degree to which necessity, rather than preference is operative. Members of the firm should be expected to plan co-operatively.

flexible schedules have already been approved will be expected to come to a cooperative arrangement concerning their schedules.

- 5.4 If the firm considers that the arrangement is not proving satisfactory, the firm reserves the right to end a flexible work arrangement and to return the individual to regular scheduling upon _____ months' notice.³⁵

6 IMPLEMENTATION AND SCHEDULING (ASSOCIATES AND NON-LAWYER STAFF)

6.1 Flexible Scheduling Coordinator³⁶

- 6.1.1 To facilitate the drafting and implementation of flexible work arrangements, [name of firm] has appointed a Flexible Scheduling Coordinator who should be consulted before any arrangement is finalized.

- 6.1.2 The Flexible Scheduling Coordinator will suggest ways to minimize overhead expenses and facilitate cooperation in the implementation of a flexible work arrangement.

³⁵ The model policy includes a clause allowing the firm, after a pre-determined notice period, to withdraw the arrangement and return the individual to a regular schedule. This clause should not be used unless all other options, including meetings with the co-ordinator, regular reviews of the arrangement and a flexible attitude on both sides have failed to resolve the problem. Obviously, a lack of good faith on either side could vitiate the arrangement and the firm should take steps to ensure that this does not occur.

³⁶ The model policy suggests that one person in the firm should be trained to assist in formulating proposals, coordinating plans, considering ways of keeping costs to a minimum and mediating minor disputes. The same person could be in charge of recording all flexible work arrangements for future reference.

The model policy adopts the term "Flexible Scheduling Coordinator". In a smaller firm the role could be filled by the managing partner or the office manager.

6.2 **Submitting a proposal**³⁷

- 6.2.1 A written proposal for a flexible work arrangement should be submitted to the Flexible Scheduling Coordinator at least ____ months prior to the proposed starting date for the arrangement.
- 6.2.2 The proposal should outline the desired arrangement, the proposed starting date, the ending date (if it is to be for a limited period) and any other information that is relevant.

6.3 **Detailed agreement**³⁸

- 6.3.1 Before a flexible work arrangement takes effect, the terms of the arrangement (including the total hours to be worked and compensation to be paid) will be clearly established in writing and agreed to by the individual concerned and the Flexible Scheduling Coordinator.

³⁷ The policy should specify the process by which an individual,

- may request a flexible work arrangement; and
- may return to regular schedule.

The policy should also state the conditions under which an individual can make the transitions to and from a flexible work arrangement.

³⁸ It is important to establish the terms of each flexible work arrangement, at the outset, in a written agreement between the firm and the individual. All expectations and all matters likely to give rise to difficulties should be identified, discussed and written into the agreement.

The firm's general expectations of all individuals implementing a flexible work arrangement should be written into the agreement.

6.3.2 The written agreement will specify hours to be spent at the office, work hours to be spent at locations other than the office, the division between billable and non-billable hours and the division between administrative and professional responsibilities.³⁹

6.3.3 The need for co-operation and open communication will be discussed and expressly mentioned in the agreement.

6.4 **Transition to a reduced work schedule**

6.4.1 When a member of the firm switches to a reduced work arrangement, there will be a transition period when part of that person's workload must be transferred to others. Where possible, the Flexible Scheduling Coordinator will reassign the workload to others within the firm. If this is not possible, the firm will consider other alternatives, including the hiring of additional staff.

6.5 **Returning to regular schedule**

6.5.1 An individual wishing to resume full-time or regular schedule work must submit a written request to the Flexible Scheduling Coordinator.

6.5.2 A request to resume full-time or regular schedule work will be honoured as soon as possible and not later than _____ months from the date of the request. (The _____-month period is intended to allow the firm some flexibility in accommodating the needs of all parties involved.)

³⁹ The flexible work agreement must be tailored to the specific individual and the type of law practised. Several types of arrangements are possible, including arrangements based on hours or days worked a week, weeks worked in a month or year, or even the number of cases or transactions of which a lawyer will have carriage.

For example, a litigator on a reduced hours schedule might choose an agreement based on hours worked per month or year rather than on specific days in the office. Such an arrangement would permit the litigator to work more than full-time during a trial and to reduce hours when the trial is over. A similar arrangement might be suitable for a corporate lawyer who works on a "deal" or project basis.

6.6 Urgent matters

- 6.6.1 When an urgent matter arises at a time when the flexible schedule individual is not in the office, the matter will be handled in the same way as it would be if the individual concerned were on a regular schedule but not in the office.⁴⁰

7 CAREER ADVANCEMENT AND ELIGIBILITY OF ASSOCIATES FOR PARTNERSHIP

- 7.1 [Name of firm] has as much of an interest in the long-term career development of flexible schedule lawyers as it does in the career development of lawyers on regular schedules.
- 7.2 There will therefore be no difference in the quality of work given to flexible schedule lawyers and no difference in the firm's attitude towards their professional development.
- 7.3 Opportunities for professional enrichment and advancement will continue to be available to the flexible schedule lawyer, although it must be recognized that such opportunities may, at times, interfere with the flexible work arrangement.
- 7.4 The fact of participation in an flexible work arrangement will not, in itself, influence the decision of whether or not the associate is to be admitted to partnership.⁴¹ However, where

⁴⁰ Regular-schedule lawyers must expect to be called upon occasionally to handle emergencies involving the files of flexible work arrangement lawyers when those lawyers are not in the firm's office. Such a situation can arise for any lawyer regardless of schedule. When it happens in the case of a flexible work arrangement lawyer, it should be treated in accordance with standard firm practice.

⁴¹ The model policy is designed to avoid creation of a permanent second-class career track for disabled lawyers, or for (typically) women with families. A second-class track will usually be underpaid, offer

the associate has taken a leave of absence exceeding ___ months, the timing of the partnership decision may be delayed for a period commensurate with the duration of the leave of absence.⁴²

8 **COMPENSATION (ASSOCIATES)**

8.1 **Full-time hours**

8.1.1 Any flexible work arrangement under which the associate works the equivalent of full-time hours (flexitime, compressed time, flexiplace) will be compensated in the same way as any other full-time position without reduction in salary or benefits.

8.2 **Reduced schedule associates: salary**

8.2.1 [Name of firm] will compensate an associate on a reduced schedule by making a realistic assessment of the compensation that would be received by a comparable associate working on a regular basis. In calculating the salary of the comparable regular schedule associate, the firm will consider all factors that are normally relevant to compensation decisions. These factors will include qualifications, abilities, length of tenure and productivity.

8.2.2 The salary of the flexible schedule associate will be directly proportionate to that of the comparable regular schedule associate according to the following formula:

limited access to promotions, less rewarding types of work, and fewer benefits. It will give reduced access to decision-making at the firm. It may constitute discrimination on the basis of disability, sex or family status.

In most cases, associates will use flexible work arrangements for part of their careers only. Therefore, no valid reason exists for permanently excluding them from access to partnership or other senior positions.

⁴² Whether or not an associate will have to give up the flexible work arrangement upon being offered partnership will depend upon the firm's policy regarding flexible work arrangements for partners. If the firm makes flexible work arrangements available to partners, there may be no reason for a flexible schedule associate to relinquish the arrangement upon being offered a partnership.

$$\frac{\text{Number of hours worked by reduced schedule associate}}{\text{Number of hours worked by regular schedule associate}} \times \text{Salary of regular schedule associate} = \text{Salary of reduced schedule associate}$$

8.2.3 For purposes of the formula, the firm will use actual hours spent in all billable and non-billable activity rather than targeted hours.⁴³

8.2.4 Hourly rates will generally be avoided. However, where an hourly rate is deemed more appropriate for a particular arrangement, the firm and the associate will negotiate a rate that incorporates all the factors normally considered in other compensation decisions at the firm.⁴⁴

8.3 **Reduced schedule associates: benefits**

8.3.1 Reduced schedule associates are entitled to participate in the full range of benefits that are provided as part of the overall compensation package for associates.

8.3.2 Optional benefits such as _____ [list], will be available to reduced schedule associates on a *pro rata* basis.⁴⁵

⁴³ Determining an appropriate method of calculating compensation for flexible work arrangements that involve reduced hours may prove a complex task. The firm should identify the factors to be applied when deciding the salary of a comparable regular schedule associate.

To avoid misunderstandings, the policy should specify how compensation is to be determined.

For reasons of fairness, the model policy specifies that actual hours worked (as distinct from targeted hours) are to be used in the calculation.

⁴⁴ In some cases, such as where an individual is to be called for work only as and when needed, an hourly rate may be a fairer and more convenient method of calculation. The model policy emphasizes that the hourly rate should be based upon the same factors that are used in fixing the salary of an individual who works regular hours.

⁴⁵ Providing full benefits for flexible schedule individuals on reduced hours is recommended, despite the additional cost, because of the satisfaction and loyalty that will be generated for the firm.

The model policy provides for full benefits. If the additional cost of full benefits is so great as to constitute undue hardship, the firm should at least pay the proportion of the benefit costs that relates to the percentage

8.3.3 Firm-supported opportunities for professional enrichment (such as conferences and courses) are awarded on the basis of the relevance of the program to the associate's practice, or to changes in the associate's practice. The fact that an associate is on an flexible work arrangement will not affect that person's eligibility for such opportunities.

8.4 **Performance bonuses**

8.4.1 Any performance bonuses awarded by the firm will be given to flexible schedule associates on the same basis as they are given to regular schedule associates.

8.5 **Vacation and leave**

8.5.1 Eligibility for leave (paid and unpaid) will not be affected by the fact that an associate is on a flexible work schedule.

of regular hours worked -- permitting the reduced schedule individual to pay the balance of the cost.

- 8.5.2 Vacation and leave time will accrue for the reduced schedule associate in the same manner as they would for a regular schedule associate except that the rate of accrual will be proportionate to the reduced work schedule.⁴⁶

9 COMPENSATION (NON-LAWYER STAFF)

9.1 Full-time hours

- 9.1.1 Any flexible work arrangement under which the individual works the equivalent of full-time hours (flexitime, compressed time, flexiplace) will be compensated in the same way as any other full-time position without reduction in salary or benefits.

NB: The section on compensation for non-lawyer staff should be completed according to the needs of the particular firm. It may include the same issues as those noted above in respect of associates' compensation, or have significant differences, depending on the firm's situation.

10 REGULAR REVIEWS (ASSOCIATES AND NON-LAWYER STAFF)

- 10.1 An initial meeting will be arranged to review every flexible work arrangement three months after its implementation. Regular meetings will be held every six months thereafter.
- 10.2 The meetings will be held between the individual on flexible schedule and the Flexible Scheduling Coordinator [or the managing partner or a mentor].
- 10.3 Where the individual is being frequently called upon to work hours outside of, or in excess of, those specified in the flexible work agreement, the problems will be resolved at the review meeting.
- 10.4 Regular review meetings are in addition to routine performance reviews.⁴⁷

11 FIRM MEETINGS

⁴⁶ As vacation and leave time are directly related to time worked, the entitlement should be on a *pro rata* basis.

⁴⁷ Frequent reviews of flexible arrangements are necessary to make sure that everyone is content with the way the arrangement is working. There may be occasions when the review should include the individual's supervisors, colleagues or other interested parties.

- 11.1 Periodic meetings, open to all members of the firm, will be arranged to address issues arising from flexible work arrangements.
- 11.2 Such meetings will provide an opportunity for the individual on a flexible work schedule to raise any difficulties s/he may have encountered.
- 11.3 The meetings will also allow members of the firm to review the goals and purposes of the flexible work arrangement policy, and discuss any proposals for changes to the policy.

12 APPEALS

- 12.1 Any decision of the Flexible Scheduling Coordinator may be appealed in writing to the [Management Committee; Managing Partner; Office Manager].
- 12.2 A response to an appeal will be given within one month.⁴⁸

⁴⁸ An appeal process may be desirable given the various matters in respect of which the Flexible Scheduling Coordinator will have a discretion. Decisions subject to appeal could include decisions about the initial arrangement, decisions relating to changes of an arrangement already in existence and decisions about the resumption of regular work.

It is suggested that appeals should be dealt with by a committee comprising representatives of partners and associates, and non-lawyer members of the firm.

13 FLEXIBLE WORK ARRANGEMENTS FOR PARTNERS⁴⁹

- 13.1 [Name of firm] supports the principle of flexible work arrangement for partners.
- 13.2 A partner wishing to explore the possibility of a flexible work arrangement should discuss the matter with [_____].
- 13.3 Where a flexible work arrangement is negotiated with a partner, individual arrangements will be made. The following general principles will apply:
 - 13.3.1 Compensation decisions for reduced schedule partners will be based upon the same criteria as for regular partners.
 - 13.3.2 Reduced schedule partners will continue to have responsibility for non-billable activities in proportion to their reduced work schedules.
 - 13.3.3 Decision-making power and equity status in the firm will not be affected in any way by a flexible scheduling arrangement.

⁴⁹ The rationale for providing flexible work arrangements for associates applies equally to partners. The mechanics of the arrangements for partners may be somewhat more complicated. Separate policies may therefore need to be developed. Individual arrangements with each partner are likely to be more varied than those with associates: the firm may therefore prefer simply to outline the general principles and to work out the details on a case-by-case basis.

Some of the general principles that might be included in a partners' policy are statements that,

- the same criteria will be applied for compensation decisions as in the case of regular schedule partners;
- full benefits will be paid to flexible-schedule partners who work reduced hours;
- partners will continue to have responsibility for non-billable activities in proportion to their overall reduced schedule.

Some firms may wish to specify the mechanism for determining compensation.

It is recommended that,

- an hourly basis not be adopted;
- no reductions be made for overhead costs;
- the decision-making power and equity status of partners not be affected in any way.

14 **CONCLUSION**

- 14.1 [Name of firm] reaffirms its commitment to supporting its members in meeting needs occasioned by disability, and in fulfilling their responsibilities to their families. The firm acknowledges that the need for a flexible work arrangement does not, in any way, reflect upon the individual's diligence and commitment to the practice of law.
- 14.2 This flexible work arrangement policy is intended to benefit the firm and all its members. The firm expects all members of the firm to use their best efforts, in good faith, to ensure that those mutual benefits are realized.

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