

Modern Legal Practice

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Flexibility: the new business imperative in law firms

Manar Morales

The culture in law firms around the globe is slowly evolving and changing with the times. Once only known for its gruelling office hours, inflexible schedules and high turn-over rates, the legal industry is slowly beginning to embrace a new normal; one that offers and supports flexible working arrangements. Traditionally seen as a perk for employees, flexibility has now become the new business imperative.

The culture in law firms around the globe is slowly evolving and changing with the times. Once only known for its gruelling office hours, inflexible schedules and high turn-over rates, the legal industry is *slowly* beginning to embrace a new normal; one that offers and supports flexible working arrangements. Traditionally seen as a perk for employees, flexibility has now become the new *business imperative*.

Law firm leaders, who have long endured regrettable losses and challenges with recruitment and retention, are now reaping the benefits of flexibility – enhanced productivity, higher innovation, improved talent recruitment and retention, increased employee satisfaction and, most of all, a stronger bottom line.

As an industry that provides professional services, the sustainability of a law firm correlates directly with its ability to recruit and retain the best talent. Each year, competition for top legal talent increases and a firm's ability to offer flexibility is vital to its ability to win the war on talent and mitigate regrettable losses.

Flexibility must be framed with the business case

It's important to recognise that flexibility cannot be seen as a temporary accommodation or human resources trend. When considering a flexible working policy, law firms must investigate and identify the cost benefits and develop their unique business case for the initiative. It's critical that firm leaders consider the direct financial consequences of losing valuable employees, valuable institutional knowledge and client relationships. Replacing high-performing attorneys requires significant ramp-up time and training costs.

Furthermore, according to a recent Gallup survey, 54% of the American workforce would take a new job just for flexibility.¹ Millennials (those born between 1981 and 1996) in particular are demanding flexibility and autonomy. They specifically want to work at firms where they are allowed to self-direct when, where and how they work. Firms that meet this need have

learned to trust their employees and have placed a higher value on client satisfaction and the quality of the final product rather than the number of hours spent in the office.

Flexibility can help firms improve diversity

In the United States, millennials now comprise 35% of the workforce, making them the largest working generation.² A survey of 3,100 professionals by Flex Jobs found that 34% of millennials have resigned from a job because work flexibility was not an option. Additionally, 35% would be willing to take a 10–20% cut in salary in exchange for telecommuting options.³

It's now more important than ever for firms to commit to hiring a generationally diverse team and to address this generation's need and desire for flexibility. While millennials are often driving the discussion of flexibility, it's clear, however, that all generations will need it at some point in their career. In fact, Baby Boomers (those born between 1946 and 1964) are staying in the workforce longer and are using flexibility to slowly phase out rather than retire completely. We often hear that Generation X (those born between 1965 and 1980) is now the 'sandwich generation' that needs flexibility to care for children as well as ageing parents.

While flexibility should be available for all employees regardless of age, professional level and gender, there's no denying that flexibility can have a huge impact on a firm's ability to retain and advance women, especially those who are mothers. Additionally, with the legal talent pool becoming more racially and ethnically diverse, recruitment and retention efforts must reflect and support the need for this diversity. Firms must develop a *holistic flexibility* approach, which recognises that a diverse workforce will have different needs around when, where and how they work. For example, gone are the days when most families had a single breadwinner, who was typically male, with the other partner or spouse

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managing the home. Today's families, many of which have two working parents, are unable to thrive in an environment that solely focuses on billable hours and time in the office.

Law firm clients around the world are also demanding both diversity and flexibility within the law firms that represent them. Many general counsel expect their outside counsel to reflect their own diversity, as well as that of their law departments, companies and consumers. Clients are demanding that top talent work on their matters and they recognise that top talent is diverse. Many general counsel from a variety of industries now require that their outside firms not only demonstrate their diversity, but also maintain complete transparency about who is working on and leading their business.

Firms must adopt a holistic approach to flexibility

Flexibility has evolved with the times as well. A flexible working initiative must be broad, inclusive and comprehensive. Understanding that one size does not fit all, we advise firms to adopt a holistic approach to flexibility to include different part-time and full-time flexible options, as well as sabbaticals and leave policies. For example, while job sharing might work for some staff members, attorneys may prefer staggered arrival and departure times, telecommuting several times a week, compressed work schedules or annualised hours.

It's important for firms to make these different options available to everyone and implement them without bias – regardless of gender, race, age, family and marital status. More importantly, the communications about flexible working options to current and prospective employees must be clear and consistent across the firm.

For a flexibility policy to be successful it must be de-gendered, de-parented, de-stigmatised and integrated into the cultural norms of the organisation. Otherwise many employees, diverse individuals in particular, often face bias and stigma related to working flexibly. It's critical that all employees feel comfortable working flexibly and that they are confident that they are not impeding their career by doing so.

New trends in law firm flexibility

Each year, the Diversity & Flexibility Alliance conducts a Law Firm Flexibility Benchmarking Survey that helps firms identify challenges, opportunities and trends in flexibility. The results of this survey also help firms uncover and remove biases and develop policies that can truly impact the success of their business.

Initially, our benchmarking survey revolved around whether firms actually had a written flexibility policy. Over the years, the survey has evolved to include expanded questions on different types of flexibility and leave policies offered and the types of employees (by race, gender, sexual orientation and position) who actually use the policy. For example, do attorneys on a partnership track feel comfortable telecommuting? Are those returning from caregiver leave provided with support, tools and fair compensation? Does the firm use surveys, interviews, evaluations and pilot programmes to ensure that the programme is meeting the needs of its employees?

Our 2017 survey results uncovered some significant flexibility trends in the legal industry and enabled us to advise firms on what they should be doing to attract and retain the best talent.

While the results revealed that there are a growing number of law firms in the United States that now have formal flexible working policies, the industry still has a long way to go before usage rates increase and flexibility becomes part of its culture. We continue to see firms that offer flexible working arrangements, but have not taken the time to foster a culture that firmly embraces and supports flexibility. Therefore, our research shows that firms need to bridge the gap between policy and practice by surveying their employees regarding their perceptions of flexibility; offering educational programming for everyone; and monitoring the initiative to measure improvements and the need for adjustments.

The results also revealed that 65% of participant firms offer both reduced hours and full-time flexible working options (which we refer to as 'holistic flexibility'). Additionally, for the third year in a row, reduced hours schedules remain the most popular type of flexible work used by attorneys in the United States. The results also highlighted the fact that reduced-hours schedules are more common among non-partnership track attorneys.⁴

One of the strongest trends revealed by our survey results is the increase in firms offering gender-neutral parental leave for their attorneys. However, some firms fall short by maintaining the need for primary and secondary caregiver designations and by failing to offer 'on-ramping' (gradual return to work from leave) policies. Of the participating firms, 89% offer gender-neutral leave for attorneys, but only 13% of them have removed primary and secondary caregiver designations. Just over half of the firms offer on-ramping to attorneys returning from leave, allowing them to slowly ease their way back into work at a lower billable hour schedule.⁵

Firms that do offer paid on-ramping often see increases in retention rates as they retain those who might have otherwise been overwhelmed with the stress of full-time work and new parenthood. In reality, paid on-ramping requires a very minimal financial commitment from the firm in exchange for a potentially huge cost savings in retaining the attorney. By offering gender-neutral parental leave, without requiring primary and secondary caregiver designations, law firms are able to foster a more inclusive environment and demonstrate their commitment to supporting all employees regardless of gender, sexual orientation and family circumstance.

Embracing the culture of flexibility

As seen by the results of our benchmarking survey, law firm flexibility is still a work in progress at some firms around the world. While many law firms have formal written flexible working policies, their cultures often do not promote or support the use of the policy. I've found that most firms fall into one of five categories on the spectrum of how supportive their culture will be towards flexibility. The five levels of our Flex Success® Culture Meter include:

- **Taboo** – The firm has no flexible working policy at all.
- **Scale the Walls** – The firm allows flexibility on an ad-hoc basis, but there is no formal, written policy. This often leads to inconsistent flexible working allowances and the impression of favouritism.
- **Paper Policies** – The firm has a formal written policy, but it is barely used. Since the culture does not support the policy, employees are afraid to ask for a flexible schedule and fear

their career would be compromised if they were to implement a flexible schedule.

- **Leader Specific** – The firm has a formal written policy, but support from leadership is not clear and communication, training and support structures are not in place. Usage of the policy depends on one's individual supervisor.
- **Flex Success** – The firm has a formal written policy and has a good structure to support it.

Law firms will only be successful in implementing their flexible working policy when they have committed to fully supporting it. The firms must ensure that there is clear communication at the launch and ongoing communications throughout the year. There must also be vocal support from leadership, training for those working flexible schedules as well as those supervising them, and continuous monitoring and tracking of the success of the initiative.

Innovative new practices

In 2017, we honoured international law firm Hogan Lovells with one of our inaugural Flex Impact Awards for pioneering this new approach to flexibility and enhancing the well-being of their employees, improving their recruitment and retention of talent and boosting their business success.

Hogan Lovells is an excellent example of an international law firm that has successfully incorporated flexibility into its culture and is enjoying its countless benefits. With the goal of meeting the needs of a new generation of legal talent and supporting the wellbeing of all of its employees, Hogan Lovells developed a revolutionary flexibility initiative called the Global Agile Working Initiative.

Through this initiative, every attorney and business services member in all offices worldwide is entitled to explore his or her own unique agile working plan. Each schedule can include any aspect of agile working such as remote working, reduced hours, staggered arrival and departure times, job sharing, and telecommuting. In the development of the initiative, Hogan created a tool kit to help explain and implement the policy and initiated a pilot programme with a large group of corporate transactional attorneys, each adopting his or her unique agile work plan.

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We honoured Hogan for their ingenuity in their approach to flexibility and their leadership's commitment to inclusivity, clear communication and training.

Parental leave policies' powerful impact on retention

Another of our inaugural Flex Impact Award winners, Winston & Strawn, has seen considerable benefits from its implementation of a new, expanded Gender-Neutral Parental Leave Policy, which better supports the demands of today's families. Implemented in 2016, the policy allows 20 weeks of paid leave for attorneys regardless of gender to care for and bond with a new baby or child. Additionally, parents are not required to designate themselves as 'primary' or 'secondary' caregivers.

The parental leave can be taken at one time or in two increments within a year of the birth or adoption of a child. Winston also developed a Parental Leave Transition Support Programme that includes a Parental Leave Liaison, an external, confidential career coach, and 'ramp-down' and 'ramp-up' periods during which billable hours are adjusted to aid in the transition for new parents.

By removing the primary and secondary caregiver designations, Winston & Strawn has been able to shift the focus of parental leave from one that focuses on just women to one that focuses on all parents. Since the implementation of the policy, the firm has seen a consistent year-over-year increase in the percentage of men taking parental leave, as well as the length of leave time taken by men.

The Parental Leave Liaison and coach have been instrumental in helping attorneys maintain their connection to the firm and feel supported before, during and after their leave, with many associates choosing to participate in the firm-provided coaching. The policy has allowed parents at Winston & Strawn to find long-term career success while also caring for their families.

Framework for success

At the Diversity & Flexibility Alliance, we have created the Flex Success® Framework that advises firms on five steps that are necessary for the successful development and implementation of a flexibility policy.

Explore the business case

For a flexible working policy to be truly successful everyone must buy in to the individual and organisational benefits of the initiative. Firms need to gather workforce data and research critical hiring and retention statistics to identify which employees are staying and which are leaving, as well as what factors, including work-life issues, have contributed to those

patterns. It's also essential that firms explore and calculate the link between flexibility and business success, in particular the financial benefits of retaining valuable employees. This analysis allows firms to promote the flexible work initiative as a business imperative, rather than a perk or a favour.

Map the components

Once the firm leaders are clear on why a flexible working policy is needed, the types of flexibility must be identified to best meet the needs of all employees. Most law firms will find that establishing a holistic flexibility programme (one that provides both reduced hours and full-time flexibility options such as telecommuting and flexible start and end times) is best to meet the needs of employees with a wide range of work-life needs. Markers, such as usage and success rates, should be created to determine if certain flexibility options are successful down the road. Firms should consider including advanced leave policies that have been shown to support the retention of valuable employees.

Designing the programme

A well-articulated and formal written policy should be developed that ensures consistency throughout the organisation and clarity regarding commitments from those working flexibly, as well as those supervising and supporting them. The firm's unique policy should include a statement on why the initiative is needed, the expectations of those using it, who is eligible to use it and detailed instructions for how attorneys and staff can begin working flexibly. The policy should also outline the proportional pay, benefits and advancement of those working reduced hours.

Integrate the strategy

While well-articulated policies are important, without thoughtful implementation a law firm's policy could end up just sitting on a shelf. Implementation can only be successful if the announcement comes from the firm's leadership. The organisation's leaders must articulate the importance of the initiative and must communicate their expectation that everyone will support the initiative. Ongoing education programmes for those working a flexible schedule, as well as those supervising and supporting them, are essential to control bias and stigma related to flexibility and to ensure the success of the initiative. Consider hiring or identifying Flex Ambassadors and Flex Programme Managers, to help oversee the programme and provide extra internal support.

Reinforce Flex Success

Processes for monitoring and measuring the firm's flexibility initiative should be built into the programme from the beginning. Flexible employees,

as well as their supervisors, should be held accountable for meeting the expectations communicated to them. Questions can be incorporated into performance evaluations and climate surveys can be conducted to address challenges and build on success. As data is tracked and analysed, the policy should be continuously adjusted and updated to meet the needs of the employees and the firm.

The reality is that flexibility in law firms has truly become a business imperative. When developed and implemented carefully and purposefully, a flexible working policy can significantly impact productivity, innovation, recruitment, retention and financial success. The question is no longer whether a firm can afford to offer advanced leave and flexibility policies – it's can any firm afford not to?

Manar Morales is the President & CEO of the Diversity & Flexibility Alliance, and a national thought leader on women's leadership, diversity and workplace flexibility. The Diversity & Flexibility Alliance is a Washington-DC based think tank dedicated to helping firms and corporations create high-performance cultures that advance workplace flexibility and integrate more women into leadership positions. Manar began her career as an employment litigator representing clients in all aspects of labour relations and employment law in the United States. She has litigated in federal court, before federal administrative agencies, and in arbitration. In addition, Manar served as an adjunct faculty member of Georgetown University where she taught classes in Labour and Employment Law and Entrepreneurship.

- 1 Gallup State of the American Workplace, Findings & Implications.
- 2 Pew Research Analysis of US Census Bureau Data.
- 3 Flex Jobs 5th Annual Super Survey.
- 4 2017 Law Firm Flexibility Benchmarking Survey, Diversity & Flexibility Alliance.
- 5 2017 Law Firm Flexibility Benchmarking Survey, Diversity & Flexibility Alliance.

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