

Caregiver Flexibility Is Crucial For Atty Engagement, Retention

By **Manar Morales** (August 11, 2023)

Workplace flexibility and caregiver leave have always been important talent recruitment, retention and advancement tools as well as drivers of diversity.

But these initiatives took on even greater significance as the pandemic presented law firms with a daunting challenge when business-as-usual was not an option.

It became even more crucial for firms to figure out how to use flexibility and leave to maintain the success, productivity, engagement and loyalty of their employees, who were struggling to meet extraordinary personal and family needs imposed by COVID-19.



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Providing comprehensive paid caregiver leave to all employees enhances their health, engagement and loyalty by demonstrating that the firm cares about, and is willing to invest in, them and their families. Healthy, engaged and loyal employees are more likely to deliver strong performance and support recruitment and retention of a diverse, world-class team.

As the battle for top talent continues post-pandemic, many firms are attempting to lure employees with progressive hybrid working environments. Providing employees with caregiver leave and enhanced flexibility can be highly effective strategies for boosting engagement, recruitment and retention at a firm.

Supporting caregivers before, during and after an extended leave is a critically important way to retain top talent. A well-designed, fully paid off-ramping and on-ramping policy, which allows for gradual transitions from work to leave and vice versa, is a high-value benefit with a very positive impact on retention.

In addition to helping to establish a smooth and gradual transition for the employee and the team, paid on-ramping allows professionals returning from extended leave time to reacclimate to their caseload and their clients.

It is also important for firms to create a support structure for those returning from leave, including identifying a human resources professional who coordinates the off- and on-ramping, resources for childcare, a peer mentoring system, affinity groups and lactation support when needed.

When on-ramping policies are automatic but voluntary, employees don't need to ask for permission to reduce their hours, which increases their confidence that opting in will not have a negative impact on their career.

Further, by providing full pay, firms are removing any financial barrier that might push some professionals to opt out of an on-ramping schedule despite needing one. To destigmatize these policies, it is important to offer on-ramping to all individuals returning from extended medical and family leave, not just parental leave.

Similarly, off-ramping initiatives provide support to professionals leaving for an extended period. They help to ensure a smooth transition of client relationships and caseloads as well

as a reduction in turnover.

By implementing systematic procedures for the transition of work and providing targeted programs and resources that support individuals, law firms can create a seamless transition for parental, medical and caregiver leave.

Released in April, the Diversity & Flexibility Alliance's 2022 Law Firm Flexibility Benchmarking Study^[1] consists of responses from 68 major law firms, including a mix of AmLaw 200 firms and prominent mid-size firms, and examines the availability and accessibility of hybrid work, holistic flexible work and parental leave.

Our study found that firms with on-ramping programs made significant progress on policy features. In fact, full pay during the on-ramping period has become much more prevalent — 75% in this year's study vs. 48% in our 2019 study versus 20% in our 2017 study.

Additionally, most firms, 89.3%, continue to have automatic but voluntary on-ramping policies that do not require the employee to seek permission to participate.

Creating an encouraging culture in which taking parental leave is normalized and where men can share their positive experiences is pivotal. A 2021 McKinsey article citing interviews with 130 new fathers revealed that "men believe that having the right policy in place isn't sufficient if the work culture looked down on them for taking time off."^[2] Some pointed out that in many cases, "the company was supportive, but the culture was not."

McKinsey's interviews found that nearly half of fathers report dissatisfaction with the amount of time they are able to spend with their baby, and parental leave provides them with the opportunity to be there with their children.

The interviews also revealed that men who spend time with their new babies are happier and more fulfilled, and "many new fathers discover a newfound appreciation for their employers."

Our benchmarking study found that gender-neutral leave for attorneys, which is critical to destigmatizing participation by men, has become almost universal — 97.1% in the 2022 study versus 92% in our 2019 study.

Some gender-neutral parental leave policies offer different leave benefits based on whether the employee is a primary or secondary caregiver. These distinctions can reinforce outdated gender roles based on the notion that a child should have one primary parent and one helper parent. Many parents today have an egalitarian approach.

Our 2022 study showed that 68% of U.S. law firms do not have primary and secondary caregiver designations, a marked improvement from 41% in our 2019 study and 13% in our 2017 study.

Despite these gains, other areas of parental leave and related policies have stagnated. Over two-thirds of law firms, 70.6%, do not offer formal off-ramping policies, while 58.8% do not offer formal on-ramping policies.

Additionally, the amount of leave time under parental leave policies without caregiver designations has remained stagnant at 12 weeks, a statistic that remains unchanged from our 2019 study. In policies with caregiver designations, there remains a wide gap in leave time between primary caregivers and secondary caregivers, who get 15.5 weeks and 4.5

weeks respectively.

Paid leave should be available to all employees for all types of caregiver leave, including serious medical issues, family illness and care for an aging parent, in addition to parental leave.

While not all professionals need a parental leave policy, many will need a caregiver leave policy at some point. By making paid leave available to all employees, firms can also reduce the potential for stigma related to the special treatment given to parents.

Strong caregiver leave policies can have a direct impact on the success of your firm's gender and generational diversity efforts. It's no secret that today's employees, especially millennials, place a high value on flexibility and well-being when choosing a job.

Caregiver leave policies can be critically important to professionals at a pivotal time in their careers and should be available to all employees. This means law firms must make their formal leave policies widely available to attorneys and business professionals alike.

Unfortunately, our 2022 study revealed that, across the board, there are substantial differences in policies and programs between attorneys and business professionals.

In parental leave, a lower proportion of firms offer gender-neutral leave to business professionals than to attorneys. Compared to 97.1% of them offering gender-neutral leave to attorneys, 88.2% offer it to business professionals.

Additionally, the amount of leave time offered to business professionals is significantly less — three-week differential in policies without caregiver designations, 4.5-week differential for primary caregivers, and one-week differential for secondary caregivers.

With flexibility and hybrid work policies, over one quarter of firms report offering different options, frequencies and requirements with virtual work for business professionals.

While firms may have business justifications for some differences in workplace flexibility due to function for business professionals, these differences should only exist when there is an actual business need. In that event, other forms of flexibility should be offered to compensate.

For example, a receptionist may not be able to work virtually due to function, but can work a compressed work week, reduced hours or job share. Any differences due to business needs should be assessed through job audits and clearly communicated, and viable alternative options should be offered. This will reduce dissatisfaction and perceptions of inequity.

In addition, with parental leave and other leave policies, great differentials between employees are harder to justify from a business perspective. All individuals undergo similar experiences with childbirth, child bonding and childcare, so significant differences between employees with parental leave benefits can appear inequitable.

If there is truly a business justification for differences in leave policies — i.e., greater parental leave time needed for attorneys since their hours are typically longer and variable and/or greater sabbatical leave for attorneys due to retention issues — firms should try to minimize differences as best they can.

Finally, a supportive culture must go hand in hand with a firm's leave policy. One of the most important aspects that will determine the success of your firm's caregiver and parental leave policies is the culture that surrounds them. A great policy is of little benefit if employees, men in particular, are afraid to use it.

Discouragement can come in the form of well-meaning career advice, hours-based reward systems that are not prorated to reflect leave, or a culture that subtly frowns on taking care of family needs or is devoid of role models who openly take leave to care for their family and still advance professionally.

Most organizational cultures need to be revamped to accommodate increased acceptance of flexible working and the new needs of employees and clients that come with it.

The foregoing findings demonstrate stronger hybrid and flexible work in many respects, including more robust policy features and greater program infrastructure. As expected, hybrid work has become much more prevalent compared to before the pandemic.

Despite the hardships of the pandemic, strides in flexibility and wellness are a silver lining that were accelerated due to the COVID-19 crisis. Additionally, certain improvements have taken place with parental leave, as organizations have taken a more holistic approach to employee development, wellbeing and benefits since the pandemic.

However, organizations need to continue to make progress to achieve true equity and inclusion for all employees, add resources that are currently lacking to further foster hybrid and flexible work, and move the needle on a number of policy features around parental leave.

We encourage law firms to be iterative, address challenges and make regular updates as workplace flexibility is a constantly evolving area.

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[1] Diversity & Flexibility Alliance. "2022 Law Firm Flexibility Benchmarking Study" (April 2023). <https://dfalliance.com/research/law-firm-flexibility-benchmarking/>.

[2] Colantuoni, Francesca; Diome-Deer, Wahi; Moore, Karl; Rajbhandari, Shaibyya; Tolub, Gila. "A Fresh Look at Paternity Leave: Why the Benefits Extend Beyond the Personal." McKinsey & Company (March 5, 2021). https://www.mckinsey.com/capabilities/people-and-organizational-performance/our-insights/a-fresh-look-at-paternity-leave-why-the-benefits-extend-beyond-the-personal#/.