

GUIDELINES AND MODEL POLICY ON ALTERNATIVE WORK SCHEDULES

September, 1999

The Benchers of the Law Society of Manitoba have adopted the following Equity policy statements:

Men and women fully participate in the legal profession regardless of age, disability, race, religion, marital or family status or sexual orientation.

- (a) There is an absence of systemic barriers to entry to and practice within the profession to persons who are members of groups against whom discrimination is prohibited by law.*
- (b) Lawyers will treat with respect the dignity and worth of all persons and shall treat all persons equally, without discrimination on the basis of any of the grounds noted in the Code of Conduct.*

In order to carry out these policies, The Law Society of Manitoba has made a commitment to make available and disseminate, as requested, information to members of the profession to assist them in identifying and removing barriers to entry to and practice within the profession. The Guidelines and Model Policy on Alternative Work Schedules have been prepared by the Equity Committee of the Law Society as a first response to meeting this commitment. The committee recommends their adoption and implementation by law firms and other employers of lawyers in Manitoba.

In preparing the guidelines and model policy, the Equity Committee reviewed and considered several policies recommended by other Canadian Law Societies and American Bar Associations. These policies have been adapted for Manitoba and it is recognized that they may require further adaptation by individual law firms and employers to meet their own needs. The Guidelines and Model Policy on Alternative Work Schedules are therefore offered as a tool to assist law firms and employers in offering more flexible work arrangements to some of their partners and associates.

ALTERNATIVE WORK SCHEDULES

GUIDELINES FOR LAW FIRMS

Prepared by the Equity Committee of the Law Society

Table of Contents

- I. Introduction
- II. What are Alternative Work Schedules?
- III. Types of Alternative Work Schedules
 - A. Full Time Flexible Arrangements
 - B. Part-Time Arrangements
- IV. The Need for Mutual Flexibility
 - A. The Lawyer Working an Alternative Schedule
 - B. Firm Management
 - C. Other Lawyers in The Firm
- V. Compensation and Advancement
 - A. Compensation
 - B. Impact on Partnership
- VI. Concerns about Alternative Work Schedules
 - A. From the Perspective of the Firm
 - i) Profits and Productivity
 - ii) Commitment
 - iii) Service to Clients
 - iv) Firm Morale
 - v) “This Only Works For Big Firms”
 - vi) The “Floodgate” Fear
 - vii) Applicability to the Practice of Law
 - B. From the Perspective of the Lawyer
- VII. The Need for A Written Policy
- VIII. Alternative Work Schedules: A Sample policy for Firms

ALTERNATIVE WORK SCHEDULES

I. Introduction

The changing demographics of the legal profession and different attitudes towards traditional practice require law firms to adapt to meet the needs of the lawyers whom they wish to recruit and retain. The implementation of alternative work arrangements is one way in which firms may address the problem which many lawyers are encountering with traditional legal practice.

Lawyers face competing personal and professional demands on their time. For some, the rigors of full-time legal practice leave little time for family obligations. It is critical that firms recognize this dilemma that lawyers face, and take steps to facilitate its resolution. Alternative work schedules are a valuable option for firms to consider.

By reducing time spent at work, alternative work schedules enable some lawyers to strike a balance between their professional responsibilities and responsibilities outside the firm. As an efficient, productive means by which firms can accommodate an individual lawyers commitments, alternative work schedules also make economic sense. The implementation of a policy on alternative work schedules is a progressive step toward resolving some of the problems many lawyers encounter with traditional full-time legal practice.

In considering the adoption of an alternative work arrangement policy, firms should recognize that lawyers who choose an alternative work arrangement are just as committed to the firm and to the practice of law as the rest of their colleagues. Indeed lawyers who are trying to meet the demands of family and other outside obligations are trying to find a way to remain actively involved in their practice by seeking alternative work arrangements. Lawyers on alternative work arrangements can be more productive than their regular full-time counterparts and report an increase in job satisfaction.

The Law Society of Manitoba wishes to acknowledge that the following guidelines and policies were of assistance in preparing these materials, the Law Society of Alberta's *Alternative Work Schedule: Guidelines for Law Firms*, the Nova Scotia Barristers Society's, *Guidelines for Implementing an Alternative Work Arrangement Policy and Alternative Work Arrangement Policy*, the Law Society of British Columbia's *Alternative Work Arrangement Policy*, and the American Bar Association's Commission on Women in the Profession's *Lawyers and Balanced Lives: A Guide to Drafting and Implementing Workplace Policies for Lawyers*.

It is recognized that the enclosed policy will have to be adapted to meet the needs of a particular firm. Hopefully, these guidelines will assist in tailoring the alternative work arrangement policy to best suit an individual firm or employer.

II. What are Alternative Work Schedules?

In general, alternative work schedules are work schedules which allow a lawyer, partner or associate, to work less than full-time hours. The key to alternative work schedules is their flexibility; they are tailored to the particular needs of the individual lawyer and law firm. A lawyer might, for example, work half days, certain days a week, or certain weeks per month. There is no pre-determined limit to the creativity of an alternative work schedule; the only limitations are the schedule's practicality, fairness, and flexibility within the setting of a law firm.

When adapting alternative work schedules to law firms, the following minimum requirements are suggested:

1. The policy should clearly define what contribution the person is expected to make, ie. The lawyer must work a defined percentage of his or her prior annual billable and non-billable hours.

2. The lawyer must keep reasonably regular and predictable office hours, and must communicate these to colleagues, clients and support staff.
3. The lawyer must maintain a degree of flexibility in his or her schedule in order to accommodate client emergencies, peak work periods, or difficulties in scheduling.
4. The lawyer must maintain reasonable contact as necessary with his or her office during off hours/days.

These criteria are not limitations on the creativity of proposed alternative work schedules - they are merely suggested threshold requirements, and elementary aspects of professional responsibility.

III. Types of Alternative Work Schedules

While there are many forms of alternative work schedules some examples of more common types of alternative work schedules include:

A. Full-Time Flexible Arrangements

1. Flexible working time - With flexible working time, the number of hours that must be worked and billing requirements do not change; but, the usual fixed hours are replaced by a flexible schedule. There is usually a core time during which all employees are to be present, with the flexible portions being at the beginning and end of the day.
2. Compressed work week - There are varying forms of the compressed work week.
3. The work schedule may include work at home arrangements whereby all or part of the work arrangements can be conducted at home or an alternate location. With the advent of technology this alternative is more viable than in the past.

B. Part-Time Arrangements:

1. Job Sharing - Job sharing entails two people sharing the responsibilities, hours, salary and benefits of one-full time position. It is a flexible form of permanent and part-time work, which can be characterized by a division of the work week, or work days, or by alternating weeks.
2. Part-time Work - Part time work means reduced hours, either by shorter daily hours, or by working fewer days in a week.
3. Specified case or cases - Arrangements may be made to complete or conduct a specific case or cases to completion after which time off is scheduled.

IV. The Need for Mutual Flexibility

The success of an alternating work schedule depends entirely on the flexibility of the lawyer working the alternative schedule, firm management, and the other lawyers in the firm.

A. The Lawyer Working an Alternative Schedule

Although the lawyer's schedule must be respected to the extent possible, there will inevitably be occasions that demand the lawyer's availability without regard to his or her work schedule. The lawyer whose alternative work schedule has been approved must be flexible enough to accommodate occurrences such as client emergencies, peak work periods and scheduling difficulties. These circumstances are inevitable for any profession, and the lawyer working an alternative work schedule is no exception. In general, these circumstances should not amount to more than minor glitches in the efficient functioning of the alternative work schedule. If these occasions occur with enough frequency so that the schedule is consistently being disrupted, this should be brought up by the lawyer at his or her periodic review.

B. Firm Management

After approving the alternative work schedule, the managing partners of the firm should remain supportive of the lawyer. If problems with the schedule arise, these should be constructively addressed at the lawyer's periodic review. Every reasonable effort should be made to encourage the proper functioning of the alternative work schedule, including encouraging other lawyers to be more flexible when dealing with lawyers working alternative schedules. Above all, firm management must respect the integrity of the alternative work schedule.

C. Other Lawyers in the Firm

The success of an alternative work schedule depends largely on the cooperation of all lawyers and staff in the firm. Aside from obvious behavior such as denigrating lawyers working alternative work schedules, other lawyers can impede the efficient functioning of alternative work scheduled by consistently scheduling meetings at problematic times. Other uncooperative behavior might include intimating to clients that the lawyer working an alternative schedule is "never around", demonstrating open and unreasonable frustration with the lawyer's schedule, or badgering the alternative schedule lawyer on days/hours off. The lawyer electing to work on an alternative work schedule needs to ensure that adequate arrangements are made to service clients so that other lawyers do not become unduly burdened during the lawyer's absence from the office. The importance of the role of support staff in dealing with clients, other lawyers, or firm colleagues when the lawyer on an alternative work schedule is not in the office is recognized. Support staff should have appropriate instructions on how to handle such calls. The key to successfully implementing an alternate schedule is good communication among all the lawyers and support staff.

V. Compensation and Advancement

A. Compensation

One of the most common complaints from the lawyers who have elected an alternative work arrangement is that it becomes a de facto or full-time position for a part-time salary.

Where an alternative work arrangement involves a reduced hour schedule, salary is generally adjusted on a pro-rata basis. Some accommodation should be made for lawyers who have had to work substantially more hours than what was agreed upon. The lawyer's salary may be adjusted accordingly at the end of the year or time off in lieu may be scheduled. Since the whole purpose of choosing a reduced hours/schedule is to allow the lawyer to fulfill other personal obligations, both the firm and the lawyer on the alternative work arrangement have a responsibility to ensure that the work schedule is being respected.

B. Partnership Considerations

A lawyer who is considering an alternative work arrangement should have a clear understanding about how the arrangement will impact upon his or her partnership track. Alternative work arrangements should not affect the overall eligibility of the individual for partnership, but the progression towards partnership may be delayed if the lawyer has been on a reduced hour schedule for some period of time. If partnership will be delayed for a lawyer on an alternative work arrangement, the length of the partnership track should be discussed and understood.

It is acknowledged that law firms have different criteria for partnership. It should be recognized that if the only criteria for partnership is achieving certain minimum billing requirements, this may result in systemic discrimination. One way of addressing this is to consider the various aspects of partnership such as participation in decision making, status, profit sharing and liability. Firms may wish to consider a variety of partnership options, taking into account these aspects of partnership.

VI. Concerns About Alternative Work Schedules

Concerns about alternative work schedules must be addressed so that they are not ultimately damaging to the success of an effective policy. The concerns can be roughly grouped under the following headings:

A. From the Perspective of the Firm

i) Profits and Productivity

There is a powerful myth that alternative work arrangements will be unprofitable and unproductive. However, for the most part, concerns about profitability and productivity are not warranted.

Studies have shown that lawyers in alternative work arrangements may in fact be more efficient than their full-time colleagues since they often have higher ratio of billable hours to total hours worked. In terms of profits it may be possible for a firm to reduce some of its fixed and overhead costs because alternative work arrangement lawyers may share staff or offices. A firm should also take into consideration that longer range profits will result from the retention of talented and experienced lawyers. The reduction in turnover of associates also means a reduction in training expenses.

ii) Commitment

Lawyers on alternative work schedules are often regarded as lacking in commitment to the firm. Because they choose to spend some of their time elsewhere, this is seen to signify reduced loyalty to the firm. However, there is no necessary correlation between hours worked and firm commitment. Alternative work schedule lawyers demonstrate strong loyalty to the firm, because despite their familiar demands or other ambitions, they are actively seeking ways to remain involved in practice with the firm. These lawyers are ensuring that their work does not suffer because of personal commitments.

iii) Service to Clients

Firms may have genuine concerns about reduced service to clients because lawyers on alternative work arrangements would generally be less available than full-time lawyers. Firms worry that lawyers on alternate arrangements will be difficult to contact, and will be unable to deal with a client's day to day needs. As long as the firm and the lawyer on the alternative work arrangement are flexible in their approach to the work schedule, then concerns about meeting clients needs should be alleviated.

It should be remembered that most full-time lawyers are not available to each and every client all the time. Court appearances, meetings, and travel may mean that a full-time lawyer is not always available to immediately address a client's concerns but these matters are dealt with in a professional manner. Lawyers on an alternative work arrangement can be expected to demonstrate the same level of professionalism by being available from time to time to take client calls at home, work late, or come in during unscheduled hours/days.

iv) Firm Morale

There is a fear that allowing some lawyers to commence an alternative work arrangement will engender increased hostility and resentment on the part of the remaining full-time lawyers in the firm. Friction between full-time lawyers and those who have chosen alternative work arrangement will not become a problem if the alternative work arrangement is properly developed, implemented, and communicated to all members of the firm.

One way of ensuring a wide level of acceptance of alternative work arrangements is to involve as many lawyers as possible in the formation of the policy. The policy should be carefully explained to members of the firm so that lawyers who take advantage of it are not seen as being given special privileges (i.e. lawyers on a reduced hour schedule take the trade-off of a lower salary).

v) “This Only Works for Big Firms”

There is a perception that alternative work arrangements will only work at big firms where there are sufficient resources to handle issues such as work coverage. However, a number of small firms have successfully implemented alternative work arrangements. Small firms are often able to hire lawyers on a part-time basis to share the work load of lawyers on alternative work schedules, or to handle specific projects. As well, small firms have often invested, on a relative basis, more time and effort into associate lawyers and are more concerned about the issues of long term retention which can be addressed by offering alternative work arrangements.

vi) The “Floodgate” Fear

The fear that every lawyer in the firm will jump on the alternative work arrangement bandwagon is unfounded. The economic reality is that most lawyers are dependent on a full-time salary. Firms with alternative work arrangement policies have not experienced an overabundance of lawyers eager to participate. Alternative work arrangements appeal primarily to lawyers who have already responsibilities and commitments in other areas of their lives.

vii) Applicability to the Practice of Law

A common assumption is that alternative work arrangements will not work for members of the legal profession. However, experience in law firms in Canada and the United States demonstrate that this assumption is untrue. Lawyers in virtually all areas of law have adapted alternative work arrangements to fit their practices.

B. From the Perspective of the Lawyer

While technological developments make alternative work schedules easier to design and may increase accessibility there is a concern that lawyers working reduced hours will experience a gradual conversion of their reduced hour arrangement to a de facto full time arrangement for reduced pay. The need for the alternative work schedule lawyer to remain flexible must be balanced by the firm’s respect for the integrity of the alternative work schedule. Whenever feasible, matters should be scheduled to respect the alternative work schedule arrangement. While monetary compensation can be used for compensating reduced schedule lawyers for working beyond the agreed upon arrangements, it should only be used as a temporary solution. The purpose of the alternative schedule for the lawyer is to spend time out of the office on other important demands. This purpose will not be advanced by increasing compensation. Another solution - compensatory time off - is a flexible way to achieve an alternative work schedule goal.

VII. The Need for a Written Policy

A written policy enables lawyers who are considering alternative work arrangements to know the grounds on which their requests will be considered, as well as the impact of the arrangement on salary, benefits, and progression towards partnership. Moreover, a written policy alleviates the potential problems of hostility, lack of respect, and lack of support that may arise from *ad hoc* decisions. In general, written policies are advisable because they provide a clear understanding of the expectations and responsibilities of all parties affected by the alternative work arrangement.

The attached model policy provides a starting point for firms who recognize the benefit of adopting and implementing a policy of alternative work arrangements. Obviously factors such as the size of the firm and its area of practice may require that the model policy be adapted to suit the particular needs of the firm.

VIII. Alternative Work Schedules: A Sample Policy for Firms

A. Statement of Purpose

[FIRM NAME] (“the Firm”) recognizes that despite a strong commitment to the Firm and to the practice of law generally, an individual lawyer because of family obligations (or for other reasons), may prefer a work arrangement which restructures or reduces the time devoted to work. This policy will provide productive and flexible alternatives to full-time practices for lawyers who wish to balance professional responsibilities and other pursuits.

Within the guidelines set out in this policy, [FIRM NAME] realizes that the participation and contribution of all firm members is necessary for the success of alternative work schedules. Lawyers working alternative schedules remain committed professionals, and [FIRM NAME] believes that their opportunities for professional growth and career advancement should not be suspended.

[FIRM NAME] recognizes its responsibility for balancing the interests of the lawyer requesting an alternative work schedule, the other lawyers in the firm, the firm’s clients, and the firm itself. Efficient, organized, and flexible alternative work schedules can work to the advantage of all parties concerned.

B. Kinds of Alternative Work Schedules

Alternative work schedules are adapted by a lawyer to fit his or her individual situation. As such, schedules may be structured to reduce hours by altering hours, days or weeks worked. The variety of alternative work schedules is limited only by the need to strike a workable balance between the lawyer’s personal and professional responsibilities and the interests of the Firm. Alternative work schedules may include a job sharing, part time work, flexible hours, or a compressed work week.

C. Requirements

Although there is no pre-determined format for all alternative work schedules, they must conform to the following four basic requirements:

- (1) The policy should clearly define what contribution the person is expected to make i.e. The lawyer works a defined percentage of his or her prior annual billable and non-billable hours.
- (2) The lawyer keeps reasonably regular office hours, and communicated these to colleagues, clients, and support staff.
- (3) The lawyer maintains a degree of flexibility in his or her schedule in order to accommodate client emergencies, peak work periods, or difficulties in scheduling.

- (4) The lawyer maintains reasonable contact as necessary with his or her office staff during off hours/days.

The success of an alternative work schedule requires the acceptance and understanding of all lawyers in the firm. Other lawyers must take into account the periodic lack of availability of the lawyer working an alternative schedule, and must be reasonable when scheduling meetings with him or her.

D. Eligibility

Both partners and associates are eligible to work alternative schedules. An associate must have been employed with [FIRM NAME] for [NUMBER OF YEARS] prior to requesting an alternative work schedule.

E. Workload

Lawyers on alternative work arrangements will continue to be provided with the opportunity for professional challenge and growth. An alternative work arrangement lawyer will continue to receive quality assignments which are commensurate with his or her experience and abilities.

F. Non-Billable Responsibilities

Lawyers on a reduced hour arrangements are still expected to make a commitment to non-billable activities such as professional and client development, firm administration, recruiting, bar and community activities.

G. Compensation and Benefits

The salary and benefits for lawyers working alternative schedules will generally be adjusted to reflect the reduced hours worked. The basis for compensation will be determined in writing by the Firm and the lawyer working an alternate schedule prior to the change in the work schedule occurring.

H. Partnership

An associate working on an alternative schedule may progress towards partnership at a slower pace than an associate working full time. [FIRM NAME] considers that this delay for associates working alternative schedules, reflects the fact that lawyers working full time may have the opportunity for more experience and presumably more rapid professional development. However, the fact that an associate is working an alternative schedule is but one factor the Firm will balance in assessing his or her professional development. The basis for the partnership will be determined in writing by the Firm and the lawyer working an alternate schedule prior to the change in the work schedule occurring.

I. Requests/proposals

Requests for alternative work schedules will be submitted to [MANAGING PARTNERS/FIRMS COMMITTEE] and must be in writing. The requesting lawyer will submit the proposal at least [THE SUGGESTED MINIMUM NOTICE PERIOD IS TWO MONTHS] before he or she proposes to begin working the alternative schedule. [FIRM NAME] may consider shortening or waiving notice period under urgent circumstances.

A request for an alternative work schedule will estimate the average annual billable and non-billable hours the lawyer has been working, and will outline the structure of the proposed alternative schedule. The request will be as specific as possible, and will state precisely which hours/days are to be allocated as office time.

J. Approval

When considering proposals for alternative work schedules [MANAGING PARTNERS/EXECUTIVE COMMITTEE] will consider:

- i) the general workability of the proposal itself;
- ii) the workload and coverage situation in the lawyer's department; and
- iii) the workload of the lawyer and the firm.
(the "Approval Criteria")

K. Duration and Termination

[FIRM NAME] considers that efficiently running alternative work schedules may continue indefinitely. A periodic review of the lawyer on an alternative work schedule will take into account the approval criteria defined in J. in order to determine the future workability of the arrangement.

If a periodic review reveals that the alternative work schedule is problematic, either based on the lawyer's performance of the requirements of the arrangement, or based on changes to the circumstances underlying the approval criteria, the Firm will discuss the problems with the lawyer, and give him or her an opportunity to address them. [FIRM NAME] may terminate an alternative work schedule arrangement if, after discussions with the lawyer, it appears that for either of these reasons the alternative work schedule proves unworkable for either the lawyer or the firm. The Firm will give the lawyer at least [THE SUGGESTED MINIMUM NOTICE PERIOD IS THREE] months' notice of termination of the arrangement.

A lawyer working an alternative work schedule who wishes to terminate the arrangement and return to full-time practice will give the Firm at least [THE SUGGESTED MINIMUM NOTICE PERIOD IS THREE] months' notice, and the Firm will make reasonable efforts to accommodate a return to full-time practice, bearing in mind the approval criteria.