

**Balanced Hours Policies:
What are they, and why should law students care if their prospective law firms have one?**

**By Tiffany Smith
Kirton & McConkie, P.C.**

“Prominent, successful law firms have discovered that the new operating paradigm of balanced hours creates satisfied clients, attracts new business, and draws the best recruits like a magnet.”¹ This paper explains what a Balanced Hour Policy (“BHP”) is and why law students should care whether their prospective law firms have one.

I. What is a BHP?

A BHP allows law firm attorneys to choose a reduced work schedule without the traditional stigma of being a “part-time” lawyer. Law firms that adopt BHPs create an environment in which any attorney at the firm may elect to reduce his or her workload and receive proportionately reduced pay, benefits, and shareholder track tenure. For example, an attorney who makes \$100,000 per year at a firm with a six-year shareholder track may elect to work a 75% schedule from the outset, thus receiving \$75,000, $\frac{3}{4}$ of paid benefits, and a $\frac{3}{4}$ shareholder status at six years or full shareholder status at eight years.

Law firms create BHPs using two fundamental principles: proportionality and flexibility.² Essential elements of a BHP include: eligibility descriptions for balanced hours schedules, a process for requesting balanced hours, compensation packages (both benefits and bonuses), a description of the work assignment process, including nonbillable work, the effect on advancement, compensation for additional hours worked and a mechanism for preventing

¹Joan C. Williams & Cynthia Thomas Calvert, *Solving the Part-Time Puzzle: The Law Firm’s Guide to Balanced Hours*, 11 (NALP 2004); *see also id.* at 15 (listing prominent law firms as of 2004 who had implemented “non-stigmatized reduced –hours programs” - Alston & Bird LLP, Arnold & Porter LLP, Davis Wright Tremaine LLP, Debevoise & Plimpton, Dickstein Shapiro Morin & Oshinsky LLP, Goodwin Procter LLP, Heller Ehrman White & McAuliffe LLP, Morrison & Foerster LLP, Pillsbury Winthrop LLP, Piper Rudnick LLP, Shearman & Sterling, and Vinson & Elkins LLP).

²Williams & Calvert, *supra* note 1, at 71-72.

frequent excess hours, an agreement in writing, training for both the supervisor and balanced hours attorney, the process in case of emergency, and periodic review of the schedule.³ A complete BHP also includes strategies for managing attorney/client relationships, workload, and use of technology and support staff.⁴

BHPs “differ from traditional part-time programs in a number of ways.”⁵ First, a firm’s business needs drive the BHP; an individual attorney’s needs do not.⁶ Those business needs are: 1) increasing attorney retention, 2) reducing costs associated with attrition, and 3) improving client satisfaction and retention.⁷ Second, BHPs disavow the concept that an attorney’s worth is based on the hours s/he spends at the office.⁸ Third, BHPs do not carry the stigma or schedule creep attached to traditional part-time polices.⁹ Lawyers receive proportionate pay, benefits, and shareholder track tenure.¹⁰ Law firms using BHPs support them for business reasons, making BHP schedules available to all attorneys so there is no stigmatizing or marginalizing of a few.¹¹ Law firms with BHPs also use a Balanced Hours Coordinator to ensure the balanced hours attorneys continue to receive their fair share of meaningful assignments, client interaction, and legal training without increasing their hours, except during a true emergency, after which the firm grants compensation time.¹² Finally, BHP-using law firms create a firm-wide atmosphere of support for its balanced hour attorneys and hold each section leader accountable for his or her BHP implementation results via section leader bonuses.¹³

³*Id.* at 73-85.

⁴*Id.* at 86-89.

⁵*Id.* at 37.

⁶*Id.*

⁷Sheila Wellington, *Women in Law: Making the Case*, 88 *Women Law. J.* 2, 13 (2003).

⁸Williams & Calvert, *supra* note 1, at 37.

⁹*Id.* at 38.

¹⁰*Id.*

¹¹*Id.*

¹²*Id.*

¹³*Id.* at 112-13.

II. Why should law students care whether the firm they choose to work for has a BHP?

When selecting a law firm, students must consider: a) their own potential job satisfaction, b) a firm's financial practices, and c) a firm's strategy for retaining and attracting clients. Law firms with BHPs excel in these three areas.

A. Attorney Retention

Most “[l]aw firms are on a treadmill of recruiting, training, developing, and losing lawyers.”¹⁴ “[F]or the period of 1988 to 1996, an average of 43% of associates left their firms within three years of hire; approximately 41% of male associates left, and 45% of the female associates left in that time period.”¹⁵ A recent National Association for Law Placement survey reported attrition increases at firms of all sizes.¹⁶

In a tight talent market, retaining excellent attorneys becomes critical when the top reason for both male and female lawyer's dissatisfaction is the inability to achieve work/life balance.¹⁷ Law firms that recognize this problem and deal with it have a competitive advantage in both hiring and retaining attorneys of both genders.¹⁸ “Forty-five percent of women chose their current employer for work/life balance, making it the number one factor in job choice for women.”¹⁹ Thirty-four percent of men also put it in their top three reasons for selecting their current employer.²⁰

¹⁴*Id.*

¹⁵*Id.* at 63, n.1 (citing The NALP Foundation for Law Career Research and Education, *Keeping the Keepers: Strategies for Associate Retention in Times of Attrition* (1998)).

¹⁶Initiative on the Advancement and Retention of Women, Women's Bar Association of the District of Columbia, *Creating Pathways to Success: Advancing and Retaining Women in Today's Law Firms*, 30 (2006) [hereinafter *Pathways to Success*].

¹⁷James J. Sandman, Managing Partner, Arnold & Porter, *The Business Case for Effective Part-Time Programs*, 88 *Women Law. J.* 2, 16 (2003).

¹⁸*Id.*

¹⁹Wellington, *Women in Law: Making the Case*, 88 *Women Law. J.* at 12.

²⁰*Pathways to Success*, *supra* note 16, at 49.

Some retention problems are specific to women. Nationally, only 17.2% of partners in law firms are women.²¹ The lack of females in leadership roles hurts retention efforts for female attorneys.²² Trained lawyers use precedent for their decision-making processes; thus, women who perceive little possibility of upward mobility leave.²³ To remain, they need female, senior-partner role models who provide “visible and realistic evidence that their own dreams of success are achievable.”²⁴ Incidentally, they do not leave to stay at home. Only 9% of female law graduates are not working 15 years after graduating.²⁵ Female lawyers are working, just not at law firms.

“Increased retention of the best and the brightest is the clearest benefit of balanced hours programs. Legal talent is a law firm’s inventory.”²⁶ Firms should attempt to retain all their valuable attorneys, but those firms that specifically attempt to retain and promote female and minority attorneys “will gain a competitive edge in the contest for new business”²⁷ and new attorneys. Thus, law students who are considering law firm jobs and who are seeking a work/life balance will ultimately select law firms with BHPs because those firms work to retain their attorneys.

B. Costs

Losing talented associates and partners is expensive, bad for business, and hurts a firm’s bottom line.²⁸ It can cost from 150%-200% of an employee’s salary to recruit and to train a

²¹*Id.* at 6.

²²*Id.* at 5.

²³*Id.*

²⁴*Id.*

²⁵*Id.*

²⁶*Id.* at 15.

²⁷*Id.* (explaining corporations reward diverse law firms with more legal work).

²⁸Williams & Calvert, *supra* note 1, at 30.

replacement.²⁹ Those costs include: lost productivity for each week the position remains vacant, recruiting and training costs already invested in the departing attorney, lost knowledge, skills and contacts leaving with the departing attorney, clients the attorney takes with him or her, administrative costs associated with an employee's departure, recruiting expenses to obtain a new attorney, bonuses, bar and moving expenses for new attorneys, time away from billing for firm attorneys conducting interviews, training costs, and lost productivity due to the new attorney's lack of familiarity with client matters.³⁰ "Firms pay these high amounts over and over again, replacing departing associates with new associates who will also leave within a year or two," often leaving the firm before the associates are ever profitable.³¹ "Firms that reduce . . . attrition will capture literally millions of dollars"³² that they can then pass on to their shareholders.

Senior attorneys who argue overhead expenses preclude them from allowing attorneys to reduce their workload may not be aware of the other costs a firm incurs in failing to support a reduced-hours attorney. James Sandman, Arnold & Porter's Managing Partner, suggests that the reality of balanced hours attorneys contributing less towards overhead is a small sacrifice to make in exchange for retaining an attorney on whom the firm has already spent recruiting money and training costs and who has developed legal expertise valuable to the firm and its clients.³³

For an attorney working a 75% workload, he calculates his firm only spends \$11,000 of extra

²⁹See San Francisco Bar Association Glass Ceiling Task Force, *Breaking the Glass Ceiling*, 88 Women Law. J. 2, 26 (2003); American Bar Association Commission on Women in the Profession, *Balanced Lives: Changing the Culture of Legal Practice*, 21 (2001); Wellington, *Women in Law: Making the Case*, 88 Women Law. J. at 13.

³⁰Williams & Calvert, *supra* note 1, at 18-19.

³¹*Id.* at 19.

³²Wellington, *Women in Law: Making the Case*, 88 Women Law. J. at 13.

³³Sandman, *supra* note 17, at 18 (explaining Arnold & Porter has received high honors for its in-house practices making *Working Mother Magazine's* annual list of 100 Best Employers for mothers four times, one of only two law firms ever to make that list (Morrison & Foerster LLP was the other firm. See Williams & Calvert, *supra* note 1, at 21.); stating firm also made *Fortune's* list of "The 100 Best Companies to Work For.")

fixed costs for that attorney.³⁴ Compared to the total income that attorney generates, he argues it is a paltry amount to pay compared to recruiting and replacement costs and associated client dissatisfaction with high turnover.³⁵

Some cost concerns relate specifically to women. Law firms have historically failed to understand the professional and economic losses they suffer in losing female attorneys.³⁶ Since 1985, over 40% of law school graduates have been women, with 70% of those women entering law firms.³⁷ Of those women, only 17.2% are now partners.³⁸ The female mass exodus from law firms represents a huge financial loss of potential clients who walked out the door with those women.³⁹ Women often employ networks different from their male counterparts. Their contacts in those networks give rise to clients the firm may not have attracted otherwise. As future shareholders, law students should select firms who understand the effect of attrition costs on a firm's bottom line and who have adopted BHPs to increase their long-term profitability.

C. Client Satisfaction and Retention

In a competitive client market, giving lawyers access to a work/life balance gives the firm a useful edge in retaining and attracting clients, contrary to the popular myth that clients do not want to work with reduced-hour attorneys.⁴⁰ Arnold & Porter's managing partner explains clients have an investment in retaining known lawyers they trust and respect.⁴¹ They want to maintain their valuable relationship with that attorney, even at a reduced schedule, instead of wasting time and money developing a new relationship with an attorney who lacks the

³⁴*Id.*

³⁵*Id.*

³⁶*Pathways to Success, supra* note 16, at 5.

³⁷*Id.* at 6.

³⁸*Id.*

³⁹*Id.* at 5.

⁴⁰Sandman, *supra* note 17, at 17.

⁴¹*Id.*

institutional memory the client has worked for and paid to establish.⁴²

In addition to improving current client satisfaction, retaining women and minority associates and advancing them to partner has become an economic necessity in attracting new clients.⁴³ Corporate America is now demanding its legal counsel promote women and minorities into leadership roles. It “is intensely focused on racial and gender diversity as a matter of strategic importance to the success of [its] business[.]”⁴⁴ “Clients mean business when they ask their firm providers to increase diversity.”⁴⁵ Sara Lee’s general counsel, Roderick Palmore, created a pledge entitled *A Call to Action: Diversity in the Legal Profession*, wherein companies who sign the pledge commit to making decisions about retaining law firms “based in part on the[ir] diversity performance.”⁴⁶ The pledge states:

We pledge that we will make decisions regarding which law firms represent our companies based in significant part on the diversity performance of the firms. We intend to look for opportunities for firms we regularly use which positively distinguish themselves in this area. We further intend to end or limit our relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse.⁴⁷

As of April 2006, ninety major corporations had signed the pledge.⁴⁸ These corporations are seeking tangible evidence of a law firm’s commitment to diversify its workforce.⁴⁹ Clients are the lifeblood of a law firm. Well-informed law students realize this fact and seek law firms who have adopted BHPs to satisfy current clients and to attract new ones. BHPs allow firms to

⁴²*Id.*

⁴³Williams & Calvert, *supra* note 1, at 30.

⁴⁴*Pathways to Success*, *supra* note 16, at 28. For example, Wal-Mart fired a law firm in July 2005 “strictly because of their inability to grasp our diversity expectations.” *Pathways to Success*, *supra* note 16, at 30. Wal-Mart also required 40 of its top 100 firms to replace their white male relationship partner with a partner who was a woman or minority. *Id.* Visa’s General Counsel, Guy Rounsaville Jr. insists that women and minority lawyers be among the client relationship managers who deal with his company. *Id.* General Electric (“GE”) now requires its law firms to break down their invoices by gender and race because GE sees the firm as a reflection of GE. *See* Wellington, *Women in Law: Making the Case*, 88 *Women Law. J.* at 13.

⁴⁵*Pathways to Success*, *supra* note 16, at 30.

⁴⁶*Id.* at 28.

⁴⁷*Id.* at 29.

⁴⁸*Id.*

⁴⁹*See id.*

reduce overall attrition while simultaneously retaining more women and minorities, thereby increasing client satisfaction by providing attorney continuity and a diverse legal team.

In conclusion, BHPs are revolutionary. They are a magnet for talented law students seeking work/life balance. They improve law firms' bottom lines by reducing attrition costs. They improve client satisfaction rates and create a way for law firms to retain female and minority attorneys whom the firm needs to increase client satisfaction and retention. Law firms with BHPs reflect a commitment to work/life balance, to fiscal responsibility, and to client responsiveness, essential law firm components for any perceptive law student's job search.