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# Guide to Assist Law Firms and Lawyers in Developing Successful Flexible Work Arrangements

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The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

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*We thank Justicia firm participants for their engagement in this project and the tremendous amount of work undertaken to develop this Guide.*

## **Part I - Background**

### ***Introduction***

The Law Society of Upper Canada developed this Guide in collaboration with firms participating in the Law Society of Upper Canada's Justicia Project. The Guide is meant to be a tool for firms to refer to when developing flexible work arrangement ("FWA") policies for lawyers, including associates and partners.

Firms historically may have questioned the business rationale for entering into FWAs as they may have been predisposed to assuming that such arrangements are not in and of themselves economically viable (i.e. do not make any profit) and lead to a loss for the firm. While FWAs with reduced hours are obviously less profitable than full time arrangements (assuming a full plate of work would otherwise be available), in order to take the entire picture into account the cost of the attrition and recruitment replacement costs need to be considered as well. To illustrate this, in addition to this Guide, the Justicia Project worked with Deloitte to develop a template, the *Justicia Flexible Work Arrangements Profitability Model* (the Profitability Model), to calculate the profitability of flexible work arrangements, more particularly reduced time arrangements. The Guide and the Profitability Model should be read together. The Profitability Model is available on the Justicia Portal.

**This Guide provides general advice and reasons to adopt FWAs. Although firms have no obligation to adopt all or any part of the Guide, firms should ensure that their policies and practices are consistent with legal obligations, including legal obligations to accommodate, up to the point of undue hardship, lawyers and paralegals' needs that are based on enumerated grounds under the Ontario *Human Rights Code*. The Guide does not provide legal advice.**

Factors such as firm culture, size of firm, practice area, existing policies, jurisdictions in which offices are located and economic considerations may be relevant to the development of a firm's FWA policy. This Guide outlines factors to consider when developing an FWA policy and provides options and checklists that firms may wish to rely on when developing their policy. FWAs may be full-time or reduced time arrangements; however this Guide focuses on reduced time

arrangements as they are most prevalent, and have the greatest impact on the relationship between the firm and the lawyer.

The Guide is only up-to-date as at the date of writing. When drafting a policy, firms should ensure that they comply with relevant legislation and jurisprudence, including the Ontario *Human Rights Code*, the *Rules of Professional Conduct* and the *Employment Standards Act*, where applicable.

### ***What Are Flexible Work Arrangements?***

An FWA is defined as any one of a spectrum of work structures that alters the time, place or amount of work that gets done on a regular basis. The following list is not exhaustive and firms are encouraged to work with their lawyers to develop arrangements that will best meet the needs of the lawyer, his or her clients and the firm. Firms may use other terminology to refer to such arrangements, for example “customized work arrangements”, “alternative work arrangements” or “special work arrangements”.

Although this Guide focuses primarily on part-time FWAs, law firms should be mindful that there also remains some stigma attached to full-time FWAs. Law firms that allow for full-time FWAs, such as working from home, should promote the nature and value of such arrangements with firm members and clients, where necessary.

#### **Common FWAs**

Reduced hours - fewer hours or fewer days than is typical, in exchange for reduced compensation.

Working remotely (often referred to as telecommuting) – working some or all of the work hours off-site, often at home.

Variable office hours (often referred to as flextime) - while targets for number of hours worked and billing requirements are not reduced, the lawyer’s in-office hours are variable. A compressed work week is a type of variable office hour arrangement and includes lawyers who work their expected hours in a smaller block of longer days in a week, or in a smaller block of longer weeks in a month.

Job sharing - at least two or more lawyers who share the responsibilities of one full-time lawyer. Each person works less than a full-time schedule.

## ***Best Practices and Issues to Consider When Drafting FWA Policies***

Internal policies on FWAs alone are often not sufficient to ensure the success of FWAs. Guidelines and institutional and firm leadership support are critical to the effectiveness and success of such programs and demonstrate that they are supported from within. Justicia participants and organizations such as the U.S. Project for Attorney Retention and the National Association for Law Placement (NALP)<sup>1</sup> have identified certain best practices for FWAs noted below.

### **Best Practices**

#### **Develop a Business Case**

It is advisable for law firms to develop their own FWA business imperative by considering the value of FWAs in light of statistics quantifying the firm's attrition rates and recruiting expenses. It is also important to recognize the long-term contribution that FWA lawyers can make to the firm. For small and medium firms, the business case might take the form of expressions of satisfaction by FWA lawyers and a calculation of overhead costs and profitability of the FWA.

When proposing an FWA, it is also a good practice for the requesting lawyer to present his or her individual business case for the FWA. For ideas on how to develop the lawyer's business case, see the description in Part II of this Guide and the Template of FWA Proposal at Appendix A. The Profitability Model may also be helpful for law firms and requesting lawyers to calculate the profitability of the arrangement.

It is noted that the firm's situation or needs will change over time and FWAs are neither automatic nor an entitlement.

#### **Firm and Key Individuals' Support**

As mentioned above, support of the firm's management and senior partners is important when implementing an FWA program. The firm may wish to consider the development of an action plan, including

- a schedule for roll out of the policy

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<sup>1</sup> Joan C. Williams and Cynthia Thomas Calvert, *Solving the Part-Time Puzzle: The Law Firm's Guide to Balanced Hours* (Washington: NALP, 2004)

- an internal communication plan to promote the FWA policy within the firm
- a process to measure progress and obtain feedback

If the firm has the resources, it may wish to consider assigning experienced mentors or an FWA coordinator to oversee FWAs and to provide support to FWA lawyers.

For firms with limited resources, a structured program may not be possible, but positive communications in which the firm is seen as supporting FWAs may be helpful.

### **Broad Eligibility and Access to FWA**

It is advisable for firms to make FWAs available to all lawyers of the firm, not just women with small children.

### **Managing Expectations**

A key to a successful FWA is to manage expectations of both the firm and the FWA lawyer. Both the firm and the FWA lawyer will likely have to be flexible and rigid schedules may not be possible. In particular, an overriding assumption regarding any FWA should be that client demands are paramount and therefore FWA lawyers may need to be available outside the proposed FWA hours or days. The level of predictability often depends on client demands and the nature of the FWA lawyer's practice.

### **Fairly Balanced Compensation and Benefits**

To enhance fairness and transparency, compensation and benefits for FWA lawyers should be fair and consistent with the firm's existing compensation system.<sup>2</sup> It is a good practice to base the level of compensation on merit and on the contribution of the FWA lawyer to the firm. Some firms may wish to set a number of hours threshold or to develop a model to calculate profitability to ensure that the FWA is profitable for the firm while also fair for the FWA lawyer. In those cases, it may be helpful for firms to refer to the Profitability Model developed by the Justicia Project.

Part II of this Guide and Appendix 1, Template of Flexible Work Arrangement Proposal, discuss factors to be taken into account when considering the profitability

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<sup>2</sup> It should be noted that if an FWA results in a reduction of the number of hours worked, this may have an impact on eligibility to benefits under insurance policies.

of an FWA.

### **Individualized Approach**

While having a policy in place is a good practice, it is also suggested that the firm maintain some flexibility within the policy to be able to take an individualized approach to FWAs by considering the circumstances, needs, performance and career objectives of each FWA lawyer and the needs of the firm and its clients.

### **Clarity about Advancement and Partnership**

Firms have found it helpful to clarify in their written FWA policy whether an FWA lawyer who is on the partnership track will continue to be considered for partnership. The firm may wish to include in the policy the timeline, process and partnership criteria that will be considered. It is a good practice to discuss with the FWA lawyer the impact of the FWA on the progression toward partnership. This should be monitored and discussed on a routine basis with the FWA lawyer.

### **Technology, Office and Administrative Resources**

It is a good practice for firms to continue to provide effective technological support to the FWA lawyer to ensure continued efficiency, flexibility and access to the firm's resources.

The FWA lawyer should also continue to have the appropriate level of office and administrative support, such as secretarial assistance, an office as required, and other necessary administrative resources.

## ***Reasons to Adopt a Policy***

### **Current Status of FWAs in Ontario**

A survey of Justicia participating firms indicates the proportion of firms that provide reduced hour and full-time flexible work arrangements. Of the Justicia participating firms that responded to the survey, 80% indicate that they provide part-time FWAs and 52% provide full-time FWAs to their associates either on an ad hoc basis or pursuant to a policy. Turning to partners, 61% of responding firms provide part-time FWAs and 52% provide full-time FWA to their equity partners. These results indicate that FWAs in law firms are fairly common practices.

### **Number of Firms with FWAs**

Position	Reduced Hours Medium Firms	Reduced Hours Large Firms	Full-Time FWA Medium Firms	Full-Time FWA Large Firms
Equity partners	40%	89%	54%	48%
Income partners	31%	65%	31%	25%
Permanent lawyers	69%	95%	52%	53%
Counsel	27%	56%	35%	26%
Contract lawyers	22%	42%	23%	22%
Articling Students	17%	10%	15%	6%
Summer students	17%	20%	15%	6%

### **Why adopt FWAs?**

When the Law Society consulted the legal profession to identify programs that could help women in private practice, lawyers consistently identified FWAs as important initiatives.

The Law Society of Upper Canada's *Change of Status Quantitative Study*<sup>3</sup> found that in 2009 twice as many women as men indicated that they had left private practice to seek balance between work and family life. Respondents indicated that better hours,

<sup>3</sup> Available online at [http://www.lsuc.on.ca/media/convmay10\\_change\\_status\\_report.pdf](http://www.lsuc.on.ca/media/convmay10_change_status_report.pdf)



control over hours and flexible work schedules were important factors that influenced their change of status.

### **Reasons to adopt FWA programs**

Retention of women and men – Firms invest a tremendous amount of time and money in the development of associates. As a result, law firms may wish to reconsider traditional work structures and provide models that allow for greater flexibility in the workplace. Of the firms that have formal written policies and routine uptake on the policies, most find that they contribute positively to the retention of lawyers, even though they often impact on the timing of lawyers' partnership progression.

Recruiting talent – Firms that promote flexibility and are committed to providing opportunities to have productive and fulfilling personal and professional lives are more likely to be seen as desirable work environments for law students and lawyers.

Attracting clients - Clients in a global market are increasingly committed to doing business with law firms that are inclusive, diverse and that promote the retention of women.

Career flexibility - Firms that promote FWAs recognize and support the various career trajectories, evolving needs and objectives of lawyers throughout their careers.

Long term commitment of lawyers- There may be periods of time or circumstances when external commitments (children or elderly parents) limit a lawyer's ability to meet standard hours and other requirements of the firm. These periods account for a relatively short period of time, when viewed in the context of an entire career. The firm, in accommodating the needs of individual lawyers in these circumstances, will benefit in the long run by retaining strong talent and future contributors to the firm.

### **Why adopt a written FWA policy?**

In addition to recognizing the value of FWAs, it is also a good practice for law firms to adopt written FWA policies.

<b>Reasons for policies</b>
Allows the firm to move away from ad hoc practices that can lead to inconsistency in approach and uncertainty for lawyers about the firm's practices
Increases transparency, objectivity, fairness, predictability and consistency in decision making
Provides an internal procedure to request and consider an FWA
Demonstrates the firm's support for FWAs
Demonstrates to staff, lawyers, new recruits and clients the firm's commitment to inclusiveness, diversity and the retention of women at the firm

## Part II - Elements of a Policy

This part is meant to assist law firms in developing FWA policies by providing a checklist of elements that could be considered in the policy development process.

The following elements could be included in an FWA policy. They are more fully described below.<sup>4</sup>

- Purpose of policy
- Responsibilities
- Definitions and types of FWAs
- Eligibility
- Procedure to request an FWA
- Written proposal
- Consideration and finalizing of proposal
- Compensation (excluding bonuses)
- Bonuses
- Benefits
- Partnership admission
- Duration/termination and Monitoring/Review

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<sup>4</sup> Note: Part II is drafted to apply to a legal environment not subject to a collective agreement.

## ***Purpose of Policy***

### **Commentary**

Firm policies often include an introductory section that outlines

- the purpose of the policy
- the firm's commitment to FWAs and to the provision of high quality client service
- any relevant governing legislation
- the fact that FWAs are intended to recruit and retain the best professional talent

Justicia participants also emphasized that FWAs are voluntary arrangements that are meant to be considered by firms when lawyers request them. They are generally not arrangements that firms impose on lawyers, either directly or indirectly, nor are they offered as of right. A firm may consider including a note on this point in the FWA policy.

Firms also have to consider their economic situation and the benefit of the FWA to the firm when considering whether to allow FWAs . A firm may wish to include wording in the policy such as "FWAs will be considered in light of the needs of the firms."

It should be noted that there may be situations where a lawyer's practice is so specialized or of a nature that makes it difficult to generate full-time hours. In those cases, a firm could offer reduced hours for less compensation to allow the lawyer to maintain his or her position at the firm.

It is a best-practice to make FWAs available broadly, recognizing that there may be limits on some firms' ability to have several lawyers on FWAs. Firms that impose restrictions on the number of FWAs that are available may wish to include an explanation in their policy.

## ***Responsibilities***

### **Commentary**

Both the FWA lawyer and the firm have a role to play in making the FWA as effective as possible and in ensuring that clients' needs are met.

Managing expectations and flexibility are important for FWAs to work effectively. It is often difficult to maintain effective FWAs and meet client needs with consistently predictable hours, and both the firm and the FWA lawyer may have to be flexible in their approach, including avoiding rigid work schedules.

### **Checklists of responsibilities that could be listed in the policy**

#### **The firm's responsibilities**

- maintain high quality legal services to clients
- assist the FWA lawyer in maintaining the FWA schedule when possible
- provide the resources that may enhance the success of the FWA
- assist the FWA lawyer in seeking to be provided with work consistent with his or her career and development goals or the FWA, if applicable
- ensure that the FWA lawyer has access to resources such as continuing legal education programs and mentoring consistent with other lawyers
- consider and address any issues with the FWA

#### **The FWA lawyer's responsibilities**

- develop individual's business case in the form of a proposal
- maintain high quality legal services to his or her clients
- continue to take ownership for the direction of her or his legal career development
- collaborate with colleagues to ensure that the work provided to the FWA lawyer is consistent with the FWA, if applicable

- maintain and manage the practice in a professional and timely manner in accordance with his or her professional obligations
- demonstrate a reasonable amount of flexibility, including allowing for last minute work requirements, and concentrated periods of work outside the alternative schedule
- identify proposed schedule and plan for necessary arrangements to ensure availability
- communicate promptly to the firm any concerns or problems with the FWA and collaborate with the firm to address them
- identify any resources that the FWA lawyer believes are needed
- strive to maintain billable and non-billable hours as approved upon in the FWA

### ***Definitions and Types of FWAs***

#### **Commentary**

A firm may find it useful to include the definition of an FWA and/or a non-exhaustive list of the types of FWAs that could be provided. (For descriptions and definitions of FWAs, please refer to Part I of this Guide.)

### ***Eligibility***

#### **Commentary**

The firm may wish to state in the policy who is eligible to work on FWAs. The Justicia survey of firms found that a majority of participating firms provide FWAs to associates and equity partners while such arrangements are not as common for summer students, articling students<sup>5</sup>, contract lawyers, or counsel.

While it is not uncommon for firms to require lawyers to be at the firm for some time before being eligible for an FWA, it is considered a good practice for firms to make FWAs available to everyone, including new hires.

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<sup>5</sup> Firms that allow articling students to be eligible for an FWA are encouraged to emphasize that the Law Society of Upper Canada rules applicable to the articling term remain in force and must be followed. The rules should be considered and discussed between the firm and student when finalizing an FWA. The rules may be consulted on the Law Society website at [www.lsuc.on.ca](http://www.lsuc.on.ca). Students should be encouraged to contact the Law Society to discuss the impact of an FWA, particularly reduced work hours arrangements, on their articling term.

### **Eligibility options**

- all lawyers are eligible
- all lawyers, articling students and law students are eligible
- only lawyers who meet certain length of service requirements are eligible
- only lawyers who meet high performance standards are eligible

### ***Procedure to Request an FWA***

#### **Commentary**

An established procedure for requesting an FWA enhances fairness, consistency and transparency.

### **Checklist of procedural steps that could be listed in the policy**

- Informal discussion - encourage a meeting between the requesting lawyer and the practice group leader or equivalent to discuss the request prior to the development of a written proposal.
- Written proposal – specify that the proposal from the requesting lawyer, if possible, be in writing and include the details described in the next section.
- Submitting the proposal - specify to whom the proposal is made and the approval process, including who considers and approves or rejects the proposal.
- Consulting – specify that the committee or person responsible for considering the request should consult with stakeholders (e.g. practice group leaders, mentors and practice group colleagues) to determine whether the FWA is feasible.
- Denying the request – provide a process for the denial of a proposal. For example, the committee/person who denies the request provides an explanation

to the requesting lawyer and a denial of the request does not prevent a lawyer from reapplying for an FWA at a later date.

- Implementing and on-going review – specify which committee/person monitors and reviews the FWA and at what regular interval.

### ***Written Proposal***

#### **Commentary**

It is a good practice for the requesting lawyer to draft a written proposal that includes a business case for the FWA, a proposal as to how the FWA will be structured, and an outline as to how high quality client service will be maintained.

Some firms use an informal approach and reduce to writing only the essential elements of the agreement, such as the FWA schedule and impact on compensation and benefits, while other firms develop detailed agreements that include compensation, bonus expectations, target of billable and non-billable hours, secretarial shared resources, and office and technical arrangements. While the informal approach enhances the flexibility of the arrangement and relies on trust that the arrangement will be honoured by both the FWA lawyer and the firm, it is a less transparent approach. A more structured written approach provides clear expectations and guidelines about the agreement and less uncertainty in the approach, but is likely to allow less flexibility in the implementation.

Some policies include a template proposal (see Appendix 1). Firms may also use the Profitability Model to ensure that their FWAs are designed to be profitable.

There is divided opinion on whether asking for the reasons for the FWA is helpful or necessary. Some literature indicates that it is a best practice to allow all lawyers to work on an FWA regardless of their reason for wanting to do so. Limiting those arrangements to lawyers who are mothers of young children runs the risk of creating a stigmatized “mommy track”. However, some firms may decide that the reason for the request is relevant. For example, firms with limited economic and human resources may only be able to allow a certain number of FWAs and may wish to consider the reason for the request as a factor in making the decision to grant or refuse.



## Checklist of important elements for a written proposal that could be listed in the policy

- Reason for the request (where required)
- Proposed work schedule including,
  - target hours and days worked
  - expectation of days when the lawyer will be available and/or in the office
  - plan for working outside FWA schedule as needed
- Anticipated length of the proposed FWA
- Proposed annual target billable hours (Firms should assist the lawyer by providing enough data to estimate the target of billable and non-billable hours that will make the arrangement profitable. Firms and requesting lawyers may use the Profitability Model to assist them in making the FWA profitable. )
- Target non-billable hours and the general nature of the non-billable activities
- Management of work and the provision of high quality legal services to clients
  - the lawyer's current and anticipated workload
  - current and expected sources of work
  - how work will be shared with other colleagues
  - how file responsibilities will be managed, including urgent work matters
  - changes to the work routine.
- Administrative and technological requirements
  - office space
  - support staff
  - remote access/lap top
  - blackberry
- Mentoring and professional development needs
- Expected impact on partnership track, including anticipated delay in being considered (assuming the lawyer is on partnership track)
- Compensation expectations
- Benefits that the lawyer would like to maintain, including vacation

## ***Consideration and Finalizing of Proposal***

### **Commentary**

The policy may provide for a process that includes a consultation with colleagues of the requesting lawyer, the practice group leader, partners in the group and mentors, to ensure that they will be able to continue to work with the FWA lawyer.

Justicia participating firms have noted that the following factors may be relevant to the firm when considering an FWA proposal:

- Sources and nature of work.
- Some practice areas may lend themselves more easily to successful FWAs.
- Support from partners will be necessary in making an FWA successful.
- The resources that the FWA lawyer will require with respect to mentoring, leadership and practice development opportunities offered by the firm.
- Tools and resources that will be required to allow the lawyer to work effectively on an FWA (e.g.. technology, office supplies, meeting rooms, offices and administrative assistance).
- The performance to date of the FWA lawyer.

Some policies state that an FWA will not be approved if it is requested to pursue other remunerated work.

It is important to be mindful of legal obligations under the *Human Rights Code*, more specifically the obligation not to discriminate based on enumerated grounds such as family status or disability. A firm may also have a duty to accommodate a lawyer under the Code based on an enumerated ground such as family status or disability, and such accommodations could be FWAs. Case law and the Human Rights Commission have outlined processes to address these types of accommodations and the firm may wish to adopt a separate policy and procedures to address such requests.

## Checklist of factors that may be relevant from the firm's perspective when making its decision

- Reason for the FWA request, if relevant
- Urgency of the request, if relevant
- Economic and business implications of the FWA for the firm. This could include an assessment of the number of FWAs that the firm can economically support and the profitability of any particular FWA. The Profitability Model developed in the Justicia Project may be a useful tool to identify the economic and business implications of the FWA for the firm.
- Anticipated length of the FWA and its impact on the firm.
- Ability of the FWA lawyer and the firm to effectively service its clients.
- Ability of the firm to allocate and manage the workload of lawyers with whom the FWA lawyer works.
- Mentoring and professional development needs of the FWA lawyer.
- The FWA lawyer's demonstrated commitment to his or her practice, including ability to develop his or her practice, delivering quality service to clients and fulfilling firm responsibilities.
- Capacity of the FWA lawyer who is on the partnership track to continue with the firm and achieve the criteria necessary for admission to partnership, including developing a mature practice, exceeding performance expectations, demonstrating commitment to the firm, consistently delivering quality service to clients and fulfilling internal firm responsibilities.
- Potential benefits to the firm and lawyers generally, such as improved morale, retention and loyalty, increased performance of the FWA lawyer and a more representative or balanced professional group.
- Whether the FWA will meet the lawyer's professional development and career goals in the short and long-term.
- Whether colleagues will continue to provide the FWA lawyer with assignments consistent with the proposal and his or her development.
- Whether the department and type of practice lend themselves to the FWA
- Whether the business case for the FWA is sound from the firm's perspective

Note: An application could be denied even if it meets all the factors outlined. A lawyer's individual performance at the firm is not the only factor that will be considered by the firm.

### **Checklist of expectations and details that could be included in a written agreement**

- target billable and non billable hours
- compensation and benefits
- office space arrangements and administrative resources
- technology and other required resources
- length of the FWA
- review process and timeline
- in the case of associates who are on the partnership track, the timeline and factors for consideration to partnership
- performance level expectation

### ***Compensation (Excluding Bonuses)<sup>6</sup>***

#### **Commentary**

An arrangement between the firm and the FWA lawyer that allows for fair compensation based on the work done and contributions to the firm is important to a successful FWA. The agreement may also include provisions about compensation when the FWA lawyer is ahead or below target.

#### **Examples of options for compensation clauses**

Compensation negotiated between parties

Compensation decisions made by firm without consultation – The firm may wish to specify,

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<sup>6</sup> This section is particularly relevant for FWAs that result in reduced work hours. It is not anticipated that full-time FWAs would require a modification in the compensation scheme.

- who makes the decision;
- the factors that will be considered, such as billable and non-billable target hours

Compensation for additional hours worked - Firms may wish to include a clause that provides for additional compensation or time off when the FWA lawyer works hours that are substantially higher than the FWA

Formula - A formula enhances transparency and proportionality, but may lack flexibility. Where that approach is taken, the policy should specify the formula. The firm may also wish to provide a formula that will allow compensation for additional billable and non-billable hours worked during the year.

### **Examples of formula clauses**

Proportional: If a lawyer is reducing his or her hours, the compensation will be reduced proportionately (80% targets at 80% pay).<sup>7</sup>

Non-proportional: For example, although a four day week arrangement will reduce hour targets by 20%, pay will be reduced by a greater percentage (80% targets at 75% pay).

## ***Bonuses<sup>8</sup>***

### **Commentary**

Firms may wish to allow FWA lawyers to remain eligible for bonuses using the criteria applicable to other lawyers. However, the eligibility for bonuses may have to be adjusted in accordance with the FWA and the firm compensation structure.

It is a good practice, in a firm policy, to list the relevant criteria considered by the firm when making decisions about bonus entitlement and to indicate how the eligibility for bonuses is affected by a FWA. This increases transparency, consistency and predictability.

<sup>7</sup> This proportional practice appears to be more common than the non-proportional practice.

<sup>8</sup> This section is particularly relevant for FWAs that result in reduced hours. It is not anticipated that full-time FWAs would require a modification in the bonus scheme.

### Examples of options for bonus clauses

- Eligible for bonus using same criteria as with other lawyers
- Bonus used to compensate for hours worked that are substantially higher than the FWA.
- Eligible for bonus on a proportional basis (formula)
- Bonus negotiated as part of the FWA negotiation
- No bonus eligibility

## Benefits

### Commentary

The *Employment Standards Act* (“ESA”) provides legal obligations related to workplace benefits. Please consult an employment lawyer and/or the Human Resources department of the firm if it is anticipated that a FWA may have an impact on benefits, including vacations.<sup>9</sup>

For information about the ESA, please consult:  
<http://www.labour.gov.on.ca/english/es/pubs/guide/benefits.php>

Health benefits are often dependant on contracts with insurance companies which cannot be modified. If that is the case, the policy should indicate which benefits may be lost/reduced as a result of a FWA.

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<sup>9</sup> Duly qualified practitioners who are employees, including associates and articling students, are subject to Part XIII (“Benefit Plans”) and Part XIV (“Leaves of Absence”) but exempt from Part VII (Hours of Work and Eating), Part VIII (Overtime Pay), Part IX (Minimum Wage), Part X (Public Holidays), and Part XI (Vacation with Pay) of the *ESA*. *ESA, ibid.*

## ***Partnership Admission***

### **Commentary**

This section applies to associates or income partners, as the case may be.

The policy should recognize that admission to partnership is ultimately a business decision made by the partners of the firm. However, it is suggested that the policy could include the following:

- Recognize that if an FWA lawyer is considered for partnership, the firm's criteria for admission to partnership apply.
- List the criteria enumerated in the firm's policies on partnership or attach the policy itself to the FWA policy. If the firm does not have eligibility criteria, the firm is encouraged to adopt such criteria and make them available to lawyers. This information is useful for lawyers to know what will be expected of them when seeking to join the partnership. Being on an FWA may result in a lawyer not acquiring the experience or skills needed to be eligible for partnership at the same progression as full-time lawyers. A process could also be put in place to allow FWA lawyers to request delaying their application to partnership in order to acquire these further skills and experience.

## ***Duration/Termination and Monitoring/Review***

### **Commentary**

Although it is more common for firms to conclude temporary FWAs, permanent FWAs can also be successful and firms may wish to allow for such arrangements.

It is a good practice to include in a policy a provision for regular reviews of FWAs to ensure that the arrangement works effectively from the perspective of the lawyer and the firm. The frequency of reviews may be stipulated or may be negotiated on a case by case basis between the FWA lawyer and the firm.

It is advisable to involve the FWA lawyer in the review, along with

the practice group leader, managing lawyer or person responsible for monitoring the FWA. The review may include discussions about whether,

- the FWA is working for the lawyer and the firm;
- work is being completed in a timely fashion;
- clients' needs are being met;
- the FWA could be more effective through use of technology or delegation;
- the compensation level is adequate based on the experience, level of competency and competency of the lawyer.

It is also a good practice to provide information about the factors to consider in a review and by whom the FWA will be reviewed.

Where an FWA is a reduced hour arrangement, firms may wish to consider allowing a lawyer to move between FWAs and standard hours without fear of repercussion. A notice period applicable to both parties to terminate an FWA could also be included.

A firm may wish to assign a firm member to the FWA lawyer to monitor the work, his or her capacity to produce high quality work and the success of the FWA.

### **Options related to duration of FWAs**

Permanent FWAs are allowed and a monitoring process is in place. There may also be a process and timeline for reviews, and provision for altering or terminating the FWA.

Duration approved provisionally, including a process to regularly monitor the FWA and allow for adjustments to be made.

Temporary FWAs only.

Temporary FWAs with discretion to extend where the FWA is working satisfactorily for the firm and the lawyer. This option should include a process to allow the FWA lawyer to provide notice within a specified timeline of a desire to extend. The policy could also include specific information to be addressed in the request and an outline of the approval process and new expiration date.



## **Checklist of items that a firm may wish to include in the policy relating to monitoring**

Monitoring input and quality of work: The policy may provide that a person will be assigned to the FWA lawyer to monitor the work, his or her capacity to produce high quality work and the success of the FWA.

Timeline for regular reviews, (e.g. every 6 months/annually). Some policies also provide that an FWA will be piloted for a trial period to ensure that it meets the needs of the lawyer, clients and the firm.

Review process, which indicates who is responsible for the review, (e.g. a mentor, a practice group leader, a committee). The process often includes a consultation with colleagues to ensure that the FWA is effective for the firm and clients. It is good practice for the process to specify how the FWA may be altered or terminated.

Factors to consider during the review, such as whether work is being completed in a timely fashion; whether the lawyer is responsive to clients; whether the agreed upon schedule is being adhered to; whether there are ways for the lawyer to be more productive through the use of technology or delegation.

## Appendix 1 Template of Flexible Work Arrangement Proposal

**Name:**

**Year of Call:**

**Office:**

**Practice group:**

**Proposed FWA start date:**

**Practice Group Leader:**

**Managing Partner:**

- 1. What is the flexible work arrangement (FWA) you are proposing and what is the reason for the request?** (Please outline the key features of your FWA proposal, including whether the FWA is full-time or reduced hours, the work schedule, such as target hours and days worked, and the days when you will generally be available and the days when you expect to be in the office.) Please consult the policy for a list of examples of FWAs.
- 2. What is the start date and length for your proposed FWA?** (Also indicate whether you would be willing to work the FWA on a trial basis and, if so, the timeline.)
- 3. What are your proposed annual target billable hours?** (Also indicate how you will continue to conduct new business development, including networking and participating in marketing efforts.)
- 4. What are your proposed annual target non-billable hours and what is the general nature of the non-billable activities?**
- 5. How do you expect to manage your workload?** (You may include information about the following: your recent and anticipated workload; your expected sources of work; how the work will be shared with other members of the firm; how the work will be handled in the context of the FWA; the benefits of the proposal; and your flexibility and availability, such as your availability to travel and to meet unexpected work needs.)
- 6. How will you meet clients' service expectations and manage clients' demands? What can the firm do to help?** (Maintaining professional and high quality client services is essential and an outline on how such services will be maintained is helpful in considering your request. You should include your current client responsibilities/relationships and any changes your new arrangement would require, such as transitioning clients to other lawyers and relinquishing main contact relationship. Please also indicate how the firm can support you to meet client expectations, such as greater assistance

from other lawyers, law clerks or students, using technology to facilitate remote access.)

7. **What level of compensation do you hope to receive during the term of the arrangement?** (The lawyer may also wish to include expectations related to bonuses.)
8. **What are the benefits that you would like to maintain, including vacation that you would expect to receive during the term of the arrangement?**
9. **What are your administrative and technology requirements under the FWA?** (For example office space, support staff, home office accommodation, and other administrative matters or technical resources such as lap top computer or blackberry.)
10. **What mentoring and career development support can the firm offer you to help make your arrangement successful?** (You should also describe how you will maintain your professional development, such as participating in firm-sponsored and outside courses, keeping current on general legal issues and case developments.)

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