



Law Society
of Ontario

Barreau
de l'Ontario

Women's Resource Centre

Guide to developing a flexible work arrangement

PART I- BACKGROUND.....	3
INTRODUCTION.....	3
WHAT ARE FWAs?	3
WHO IS ELIGIBLE TO RECEIVE AN FWA?	3
WHAT IS THE HISTORY AND STATUS OF FWAs IN ONTARIO?	4
WHY DO EMPLOYERS ALLOW FWAs?	6
PART II – CONSIDERING AN FWA	6
WHAT WOULD I NEED TO CONSIDER?	6
FACTORS THAT YOUR ORGANIZATION MAY CONSIDER	7
PART III - REQUESTING AN FWA.....	8
BEST PRACTICES TO REQUEST AN FWA	8
PART IV – DOCUMENTING YOUR FWA.....	9
SEEK AN AGREEMENT IN WRITING	9
COMPENSATION	10
BONUSES.....	10
BENEFITS.....	11
REVIEW PROCESS AND DURATION OF FWAs.....	11
TEMPLATE OF FLEXIBLE WORK ARRANGEMENT PROPOSAL.....	13

Part I- Background

Introduction

The Law Society of Ontario originally developed a guide in collaboration with law firms participating in the Law Society's Justicia Project to assist in the development of flexible work arrangement (FWA) policies. This updated version is meant to be a tool for all women legal professionals to refer to when requesting an FWA¹.

This Guide provides general advice and guidance to help you consider and request a FWA from your firm or organization. While it contains information specific to the law firm setting, the overall principles apply to any employment setting. When the term "legal professional" is used in this guide, it includes a partner, an associate, in-house counsel and a paralegal. This Guide does not provide legal advice.

What are FWAs?

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.

Common FWAs

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

Working remotely – working some or all the work hours off-site, often at home.

Compressed work week - while the number of hours worked or billing requirements are not reduced, the legal professional's in-office hours are variable. A compressed work week is a type of variable office hour arrangement where legal professionals 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 or paralegals² who share the responsibilities of one full-time professional. Each person works less than a full-time schedule.

Who is eligible to receive an FWA?

The Justicia survey of law firms found that most participating firms provide FWAs to associates and equity partners while such arrangements are not as common for

¹ Please refer to the Eligibility section for more information about FWAs as they relate to summer students, articling students, contract workers and counsel.

² This type of arrangement does not typically apply to in-house counsel.

summer students, articling students, contract lawyers, or counsel.

Since COVID-19, members of the legal services industry have had no choice but to work from home. This means that the eligibility for an FWA has now broadened. However, keep in mind that because there are rules applicable to articling placements, licensing candidates are encouraged to contact the Law Society to discuss the impact of an FWA, particularly reduced work hours arrangements, on their articling term.

What is the history and status of FWAs in Ontario?

Historically, law firms have questioned the business rationale for entering 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. However, working from home has become a necessary solution since the start of the COVID-19 pandemic. Many more organizations are now more open to FWAs for all kinds of positions and roles.

The graph below illustrates how many firms - that participated in the Justicia Project - allowed for FWAs prior to the pandemic.

Number of firms with FWAs pre-pandemic

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%

Since the pandemic, some law firms have struggled to get their professionals working back in the office.³ One study suggests that 54% of lawyers want to work in a hybrid manner, and 33% would give up their office for the flexibility to work from home.⁴ For legal departments, one study found that 2/3 of in-house lawyers believe that remote work has increased their productivity.⁵ And nine out of 10 in-house lawyers report a desire for increased flexibility in both where and when they work.⁶

The benefit of 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 2020 [Law Society of Ontario Lawyer Change Survey](#) found that 41% of women lawyers cited a lack of balance between work and family life for leaving private practice. For women lawyers under 45 years of age, this reason rose to 58%. As for paralegals, the [Change of Status or Position Survey](#) in 2020 revealed that 60% of women paralegals left private practice to allow for a better life balance.

Benefits of adopting FWA programs

Staff retention – You will probably stay longer at your organization if a change in your availability is accommodated. There are benefits to your employer as well. Organizations invest a tremendous amount of time and money in the development of legal professionals. As a result, they may wish to reconsider traditional work structures and provide models that allow for greater flexibility in the workplace. Of the firms that participated in Justicia that had formal written policies and routine uptake on those policies, most found that they contributed positively to the retention of lawyers (even though FWAs often impact on the timing of lawyers' partnership progression).

Recruiting talent – If you are looking for an employer that allows FWAs, you will probably be more attracted to an organization that is open about its FWA programs. Organizations 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 legal professionals.

Attracting clients - Clients in a global market are increasingly committed to doing business with organizations that are inclusive, diverse and that promote the

³ <https://www.nationalmagazine.ca/en-ca/articles/the-practice/workplace/2022/getting-lawyers-back-to-the-office>.

⁴ <https://www.canadianlawyermag.com/news/features/law-firms-have-historic-opportunity-to-double-down-on-innovative-use-of-space-office-designer/367638>.

⁵ https://www.ey.com/en_gl/law/labor-employment/why-in-house-lawyers-want-more-flexible-work-arrangements.

⁶ *Ibid.*

retention of women. Knowing that an organization is committed to these values might influence whether you choose to work for them or not.

Career flexibility – Working for an organization that invests in your career is key. Organizations that promote FWAs recognize and support the various career trajectories, evolving needs and objectives of women legal professionals throughout their careers.

Long term commitment – If your employer is invested in your future, then they will care about what happens to you in the short term. There may be periods of time or circumstances when external commitments (children or elderly parents) limit a legal professional's ability to meet standard hours and other requirements of the organization. These periods account for a relatively short timeframe when viewed in the context of an entire career. In accommodating the needs of legal professionals in these circumstances, organizations are nurturing strong talent for the future.

PART II – CONSIDERING AN FWA

What would I need to consider?

There is a lot to consider when thinking about whether an FWA is right for you. Here are some of the things you will want to think about:

- You do not need to wait for your organization to develop an FWA policy to ask for one
- Treat an FWA like a business proposition; develop a business case in the form of a proposal to maintain high quality legal services to your clients
- Make sure you have a dedicated space outside of the office in which to work that will allow for confidential conversations to take place
- Have internet connectivity sufficient to support all necessary communication and access; securing your home wireless network
- Identify a proposed schedule and plan for necessary arrangements to ensure availability
- Identify and request any resources that you will need
- Ensure you can use collaboration tools such as Zoom, Google Chat, Slack, Google Docs, and Sheets, etc.
- Maintain and manage your practice in a professional and timely manner in accordance with professional obligations
- Strive to maintain billable and non-billable hours, if applicable
- Continue to take ownership for the direction of your legal career development
- Collaborate with colleagues to ensure that the work provided to you is consistent with the FWA
- Establish “office hours” and clearly communicate them so that others know exactly when they can reach you; let your colleagues know what to do in an emergency
- Demonstrate a reasonable amount of flexibility where possible, allowing for last minute client meetings or social events, and periods of work outside the alternative schedule if these activities are part of your existing responsibilities

- Communicate promptly to your employer any concerns or problems with the FWA and collaborate with your employer to address them.

Your employer also has its share of responsibilities to make an FWA successful:

- Maintain high quality legal services to clients
- Assist you in maintaining the FWA schedule when possible
- Provide the resources that may enhance the success of your FWA
- Assist you with work that is consistent with your career and development goals
- Ensure that you have access to resources such as continuing legal education programs and mentoring
- Consider and address any issues with the FWA.

Factors That Your Organization May Consider

When requesting an FWA, you may want to think about the factors an organization may consider:

- Reason for the FWA request, if relevant
- Urgency of the request, if relevant
- Economic and business implications of the FWA for the organization, including an assessment of the number of FWAs that the organization can economically support and the profitability of any FWA
- Anticipated length of the FWA and its impact on the organization
- Ability of you and the organization to effectively service its clients
- Ability of your organization to allocate and manage the workload of the professionals with whom you work
- Your mentoring and professional development, and technological needs
- Your demonstrated commitment to your practice, including the ability to develop your practice, delivery of quality service to clients and the fulfillment of organizational responsibilities
- If you are on the partnership track, your capacity 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 organization, delivering quality service to clients, and fulfilling internal firm responsibilities
- Potential benefits to the organization and employees generally, such as improved morale, retention and loyalty, increased performance by you, and a more representative or balanced professional group
- How you will meet professional development and career goals in the short and long-term
- How colleagues will continue to provide you with assignments consistent with the proposal and your development
- Whether the department and type of practice lend themselves to the FWA

- Whether your business case is sound from the organization's perspective.

Note: Some organizations will not approve an FWA if it is requested to pursue other remunerated work.

Below are additional resources to consult:

- [Learn About Effective Techniques And Practices For Working Remotely](#)
- [How To Set Up A Home Office That Is Compliant With The Rules Of Professional Conduct](#)
- [Practice Management Topics When Working From Home](#)
- [Cyber Tips For Remote Work](#)
- [The future of advocacy and work arrangements 'post'-pandemic: Perspectives of young advocates](#)
- [How To Work Remotely As A Lawyer: A Guide](#)

PART III - REQUESTING AN FWA

Best practices to request an FWA

Communication is key when requesting and implementing an FWA. Below are two steps to start the conversation in your workplace:

1. Informal discussion – schedule a meeting between you and the CEO, practice group leader or equivalent to discuss your request prior to the development of a written proposal. Be specific about what you are asking for (fully remote work? working one or more days a week remotely? working remotely as needed?). Talk about any successes with working remotely if you have had them. Share the expected benefits and value of implementing an FWA to the organization. Be prepared to address any concerns, particularly about how clients are going to be served and how the work is going to get done.⁷ Highlight your recent productivity and successes. Learn to whom the proposal should be made, and about the approval process (if known).
2. Written proposal – put together a written proposal. This will help with the negotiation process. Some employers have a template that must be followed. Be sure to incorporate all the elements you discussed in the step above, as well as consider the following topics:
 - Expected days when you will be available and/or in the office
 - Anticipated length of the proposed FWA
 - Start date, trial period (typically 90 days), and intervals of evaluation (at least annually)
 - When, where and how you will be available to be contacted when you are not in the office
 - A plan for how messages can be left for you and how often these will be checked

⁷ These challenges and others are discussed in a resource developed by the [Law Society of New South Wales](#).

- Annual target billable and non-billable hours (if applicable)
- Your current and anticipated workload
- Current and expected sources of work
- How work will be shared with your colleagues
- How file responsibilities will be managed, including urgent work matters
- Your administrative and technological needs (e.g., office space, support staff, remote access/laptop, smart phone)
- Potential impact on partnership track, including potential delay in being considered (assuming you are on or interested in a partnership track)
- Your mentorship and professional development needs
- What to do when the arrangement is not working out
- Your longer-term career ambitions and planned contributions to your employer
- Benefits that you would like to retain (such as vacation)
- Your compensation expectations.

There is divided opinion on whether providing the reasons for the FWA is helpful or necessary. Some literature indicates that it is a best practice to allow all professionals to work on an FWA regardless of their reason for wanting to do so. Limiting those arrangements to new parents or parents of young children runs the risk of creating a stigmatized “mommy track.” However, some employers may decide that the reason for the request is relevant. For example, organizations 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. It is best to ask your employer if this information should be included.

Below are additional resources to consult:

- [5 Steps To Asking For The Perfect Flexible Schedule](#)
- [9 Tips For Making A Flexible Working Request](#)
- [How To Ask For A Flexible Work Schedule](#)
- [How To Negotiate Remote And Flexible Work Arrangements With Your Boss](#)
- [Making A Persuasive Case for Flexible Working: Tips For Employees](#)

PART IV – DOCUMENTING YOUR FWA

Seek an agreement in writing

Whether your FWA is a trial run or for a longer term, get an agreement in writing. This will help ensure there is no confusion later (or if the person who approved your FWA leaves the organization).

You will want to include:

- Target billable and non-billable hours

- Compensation and benefits
- Office space arrangements
- 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 expectations.

We will consider a few of these topics below.

Compensation

You should understand what your compensation will be during an FWA and it should be documented in an agreement. If your FWA continues to be full-time, then it is unlikely a modification to the compensation scheme will occur. There are, however, examples of organizations reducing the salaries of employees who continue to work from home beyond the pandemic.⁸

Examples of options for compensation clauses:

Compensation negotiated between parties, which is ideal for you.

Compensation decisions made by the organization without consultation – this is something that you will want to avoid, if possible.

Compensation for additional hours worked – this is something that you will want documented if you think there is a possibility that you will work more hours than the FWA.

The following are examples of compensation formulas used by organizations:

Proportional: If you are reducing your hours, the compensation will be reduced proportionately (80% targets at 80% pay).⁹

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

Obviously, you will want to remain eligible for a bonus. But it may be that your eligibility will have to be adjusted in accordance with the FWA or organizational compensation structure. Either way, you will want it documented in an agreement.

⁸ <https://globalnews.ca/news/8803845/work-from-home-20-per-cent-pay-cut/>.

⁹ This proportional practice appears to be more common than the non-proportional practice.

Examples of options for bonus clauses:

- Eligible for bonus using same criteria as with other professionals
- 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

The *Employment Standards Act* (“ESA”) provides legal obligations related to workplace benefits. Please consult an employment lawyer and/or the Human Resources department of your organization if you are interested in knowing the impact an FWA may have on benefits, including vacations.

For information about the ESA, please consult:

<http://www.labour.gov.on.ca/english/es/pubs/guide/benefits.php>

Health benefits are often dependent on contracts with insurance companies that cannot be modified.

Review process and duration of FWAs

It will benefit you and your organization to have a review process to determine how the arrangement is working, whether a temporary or permanent FWA. Your organization may already have one in place as part of their policy, but if they do not, you will want to include a review process in an agreement. This will give you peace of mind, knowing that there will be predictable intervals of discussion about the FWA.

The review may involve yourself, CEO, human resources department, the practice group leader, managing lawyer or person responsible for monitoring the FWA, and could include discussions about whether:

- The FWA is working for you and the organization
- 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 your experience and level of competency.

Typical options related to the duration of FWAs

Permanent FWAs with a monitoring process. You will want 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 you and the organization. This option should include a process to allow you to provide notice within a specified timeline of a desire to extend.

Template of Flexible Work Arrangement Proposal

Name:

Year of Call (if applicable):

Office:

Department/Practice Group:

Proposed FWA Start Date:

Practice Group Leader (if applicable):

Managing Partner (if applicable):

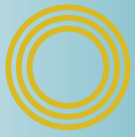
Date

RE: Requesting a Flexible Work Arrangement

- 1. What is the flexible work arrangement (FWA) you are proposing and consider whether the reason for the request is appropriate to include?** (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.) Consult your employer's policy if one exists.
- 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. This will not apply to in-house counsel or government employees.)
- 4. What are your proposed annual target non-billable hours and what is the general nature of the non-billable activities?** (This will not apply to in-house counsel or government employees.)
- 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 organization; 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 organization 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 professionals and

relinquishing main contact relationship. Please also indicate how the organization 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?** (You will also want 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 smart phone.)
10. **What mentoring and career development support can the organization offer you to help make your arrangement successful?** (You should also describe how you will maintain your professional development, such as participating in organization-sponsored and outside courses, keeping current on general legal issues and case developments.)



Law Society
of Ontario

Barreau
de l'Ontario

©2023 Law Society of Ontario
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N6

[LSO.ca/womens-resource-centre](https://lso.ca/womens-resource-centre)
facebook.com/lawsocietyLSO
twitter.com/LawSocietyLSO
linkedin.com/company/law-society-of-ontario/