



# Moms v. Non-Moms

## Does Law Firm Culture Widen the Rift?

By Cynthia L. Cooper

Certain incidents tip lawyer Andrea Reynolds over the edge. Take, for example, the night she had to work late because of a colleague's delayed arrival the day he and his wife took their baby to the doctor for a checkup.

"To me it's ridiculous they thought both had to go," says Reynolds, a 26-year-old lawyer who works in a small worker's compensation firm in Huntington, West Virginia. "I understand if you are a parent, you need to spend time with your kids, but sometimes people go overboard."

Reynolds is on the cusp of a movement of people who are choosing not to have children and who chafe at the notion that lawyers who are also parents deserve special work accommodations. The tension spurred by their frank resistance to special

treatment raises the stakes on work-family issues, an arena in which law firms already struggle to find balance. Although bar associations increasingly promote practice adaptations that might help prevent the exodus of women with family obligations, other women are quietly seething. To them, such changes amount to subsidies paid for by those without kids. Yet open discussion of the issue seems taboo.

"Who wants to be a woman who says 'I don't want to have children and I don't think it's fair'? You sound like a total witch. I know other people who think the same, but they don't speak up," says Anna Shih, 32, a patent lawyer in Michigan. "It's a fairness issue. They act like parents are the only people who wrestle with the issue of busy lives," she says.

Kelley O'Donnell, 37, a 2000 law

school graduate and insurance defense lawyer in Chicago, says, "They act like having a child is a calling and they can't stop doing it—like having a child is not a choice." O'Donnell, married for 10 years and without children, earned her law degree at night while working during the day as a paralegal where she now is employed. During that time, she says, her mother suffered from breast cancer twice and her father-in-law had a stroke. "No one offered me part time. I had to balance my sick parents and work around the clock. But the mummies got to go home from work at 2 o'clock."

Shih echoes this sentiment, describing a life full of outside commitments for which she finds time without benefit of special scheduling. She devotes one day every weekend to her parents, has a boyfriend she

spends time with, and is a freelance writer. "Who is to say one out-of-work endeavor is worthwhile and another isn't?" she asks.

#### A Problem Rooted in Culture

The heavy workload demands of law firms traditionally have been part of the hazing process by which young lawyers are expected to prove their worth—a cultural imperative that requires them to suffer in silence. This equation of a lawyer's commitment to tolerating an overtaxed schedule sets the scene for tension between those who work long hours and those who with alternative schedules; in law firms, the latter category overwhelmingly is made up of women with children. Cynthia Fuchs Epstein is a professor at City University of New York and coauthor of *The Part-Time Paradox: Time Norms, Professional Life, Family and Gender* (Routledge, 1998). Given that part-time schedules in law are equal to what other professions consider full time, Epstein believes law firms must reconsider the demands they put on people. "It has to do with a symbolic workaholicism rather than an economic concern," she says. A more equitable workplace requires "serious institutional planning" and managerial oversight that would avoid casting the alternative schedule as a women's issue or a deviant career path. "It should be part of the normal pace of the life cycle for everyone."

By treating alternative schedules as parental accommodations granted ad hoc, firms inevitably set the stage for trouble, says Deborah Holmes, a former consultant to law firms. "In any culture of scarcity, people who have something are resented," she says. "Eliminate the culture of scarcity, and no one will be angry at anyone." Ernst and Young, her current employer, has an alternative-hours program that employees can use however they see fit—from training for a marathon to working as a minister, she reports.

Home offices, phone conferencing, and e-mail facilitate the flexibility. "Why would you make it only for parents? Really, it's none of the law firm's business why someone wants to work part time."

Institutionalizing the acceptance of outside commitments, whether or not they involve family, would benefit firms in a number of ways. A recent report by the ABA's Commission on Women in the Profession, "Balanced Lives: Changing the Culture of Legal Practice," notes that excessive workloads are a leading cause of lawyers' disproportionately high rates of reproductive dysfunction, stress, substance abuse, and mental health difficulties.

Smaller firms may have an easier time instituting policies that offer all lawyers schedules that allow outside commitments, free of stigma. Half of the 16 lawyers at Sullivan, Weinstein & McQuay in Boston, opened in 1995, are part time, a winning approach says partner Sandra S. McQuay. "We have tried to accom-

#### Epstein:

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modate people with different schedules and needs. Parenting is one of the reasons. But there are other reasons, as well. We don't differentiate," says McQuay. One lawyer, for example, is typically off on Fridays to pursue an interest in writing. A key aspect is flexibility on all sides. That means the firm will support a lawyer's need for flexibility, but sometimes people must modify their personal schedules to suit firm needs as well.

Larger firms that have successfully instituted flexible schedules have found it a surprisingly complicated process. "It's been an evolution. We

tried a lot of things that worked and a lot that didn't work," says Kathy Fisher, a member of the board of directors of Morrison and Foerster, headquartered in San Francisco. Fisher began worrying about flexible arrangements 25 years ago when she noticed women's careers being devalued as they took on parenting responsibilities. Defining policies at her firm was a struggle, and assumptions often came to light only after the fact. Would a lawyer who opted for part-time work always return to full time? How quickly could a part timer move up the partnership track? Should specialties like litigation practice be treated differently?

"The policies were less important than the willingness on all sides to make it work," Fisher says. Current policy permits accommodations for caretakers of children, parents, spouses, or significant others. Other flexible schedule requests are granted if they serve the firm's needs. Fisher, a litigator and single parent who did not take the part-time option herself, says that decision was excruciating. "As a mother and lawyer, I don't know if it ever works out really well. You end up without enough time for yourself."

#### Hope on the Horizon?

Societal pressures are already altering the cultural landscape of firms, believes Joan

Williams, a law professor, author of *Unbending Gender: Why Family and Work Conflict and What To Do About It* (Oxford University Press, 2000), and coauthor of "The Project for Attorney Retention," an American University report conducted with D.C.-area firms. Younger lawyers are more insistent about balanced lives, she says, adding that firms would do well to listen to what associates are asking for. "There is a mismatch in the law between money and time. People want more time, not more money."

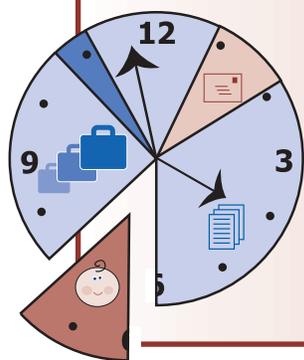
Lawyer-moms on alternative

## Firms Slow to Embrace Policies

In many firms, flexible time and part-time policies—crucial for lawyer-moms who want to spend time with the kids—exist on paper but carry a stigma in practice that discourages their use. A 2000 survey of more than 1,000 law firms by the National Association for Law Placement revealed that part-time options are available to experienced attorneys in 94.5 percent of large law firms as a matter of policy or on a case-by-case basis. But only 3.2 percent of attorneys use the option—1.9 percent of partners and 4.4 percent of associates. And lawyers working part time, by and large, are mothers with children.

Going part-time in the law carries career consequences. Seventy-five percent of partnership track associates believed that reduced schedules affected their path to partnership, according

to a study by the Women's Bar Association of Massachusetts. There are "significant problems with existing part-time policies," concluded the Project for Attorney Retention, a D.C.-based study conducted by the Program on Gender, Work & Family of American University's Washington College of Law. But the study found that some firms are seeking viable models; the study suggested that those firms that establish workable policies will become the employers of choice.



schedules can help accelerate the changes these new attitudes will bring, says Judith Fryer, a shareholder in the New York office of a large firm and mother of two. She stresses the need to be careful that scheduling to accommodate family obligations doesn't require "dumping" on colleagues or clients. "I would hope that by being open about how integral my children are to my life, I am not antagonizing my colleagues; quite the contrary, I hope I am providing assurance to the people in my office that they, too, are entitled to have 'another' life."

Such awareness may help change the culture over time, but law firm resistance to sanctioning the "other life" stubbornly persists. Rarely are scheduling innovations part of an openly reviewed and discussed policy, and guidelines can vary depending on department. Sometimes the terms of an alternative schedule are kept secret outside the firm: "My own arrangement is super, but we keep it confidential from opposing

counsel and clients," says one New York woman who is co-parenting a young child. "They have no idea I am part time because we feel it would erode confidence."

Consultant Freada Klein of Klein Associates, which has done numerous surveys of New York City law firms over the past 10 years, points out that many of today's partners built their careers in a different era, when single-minded commitment was viewed as the only route to the top. "There is always a very charged conversation about whether it is possible to be a top-tier, client-concerned firm and have anything else in your life come first."

Ellen Hoffman's experience confirms the pervasiveness of the firm-is-all attitude; her Connecticut lawyer-recruiting business gets offered "no positions that are part time, or even full time where they would consider a reduced schedule. They think such a person is not committed: 'This is a person who is concerned about hours.'" Hoffman also notes that

callers asking for part-time positions are invariably women.

Of course, not all women with children favor a change in culture. Older, successful women lawyers who developed their careers without special accommodations often believe if they could do it, other women should as well. On a Web board called Greedy Associates with Children, a woman says many women at the senior level in large firms got where they are at great expense to their families. "Maybe it's time for people like the folks who post on this board to stick it out and rise to those levels and act as meaningful role models and mentors . . . Unfortunately, we don't seem to stay with the large firms long enough."

### Top-Down Approach

Williams believes good management can make the difference in making benefits like flexible scheduling for parents available while avoiding backlash from those without children. "You can't assume that people without kids will pick up the pieces or work 60 hours a week." She insists that setting policies that allow for flexibility—for parents and for those without kids alike—is in the best interest of firms. "For managers, if someone wants to cut back hours, the question should not be why do you want to but does it meet my needs," she says. Accommodating part-time workers has associated costs, but establishing a workable part-time option can reduce turnover, which carries its own cost of finding and training a new lawyer (which she estimates to be between \$200,000 and \$500,000). Furthermore, flexible scheduling can help ease layoffs in times of recession. If there is a shortage of legal work, she says, "is it better to cut staff or better to cut hours, especially if that's what people want?"

Not everyone who has studied the problem is as optimistic as Williams. Law firms are miles away from sensible policies adopted by cor-

porations and other businesses years ago, says Holmes. "I've been looking at law firms for 15 years. I used to think work-force pressures are going to force law firms to confront this. But it hasn't happened yet, so maybe it won't happen." Lawyers, she says, fail to take employee management seriously because they are steeped in a narrow view of law professionals as individuals serving client needs. For firms to craft innovative solutions to perennial worker problems, they first have to accept that they are businesses with work forces to manage. But, Holmes laments, "They would rather have 30 percent attrition."

Hoffman agrees. When she was juggling her law practice and childcare responsibilities, she says, "Had I gone and said I wanted to work less, they would have said 'Take a hike!' If you don't want to work crazy hours and live for the firm, they don't want to hire you. The firms don't change. So the women vote with their feet."

Finding ways to accommodate both those with kids and those who choose not to have them will continue to challenge firms as they seek to slow attrition. Issues raised by childfree lawyers could lead to better and more inclusive policies for everyone, if those issues are brought out in the open and carefully considered. Left to fester, they contribute to underlying tension, even if it only shows up on an anonymous Internet post. One lawyer sent a message to a lawyers' chat room, grumbling that five children were running around the firm, one having thrown up on a legal assistant. Another responded that the partners were crafty: "What a foolproof way to ensure that the younger, childless GAs [greedy associates] remain childless."

As for Reynolds, she finds herself making her own accommodations these days. "Sometimes people bring kids to work," she says. "I just kind of close my door." 🚫

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## Setting Alternative Scheduling Policy

Among the most important accommodations for women lawyers with children is flexibility in scheduling, including part-time arrangements. But care must be taken that such policies do not result in shifting of workload to other lawyers in the firm. Policies should not be restricted to use by women with children but should be available to lawyers of both sexes, to accommodate a variety of needs. Other considerations include:

**Make It a Written Policy.** It is preferable for firms to adopt formal written policies for alternative work arrangements. Absent such policies, some lawyers may doubt the organization's support for reduced or flexible schedules. A lack of predictability in arrangements makes it difficult for lawyers to plan their careers, and a lack of consistency in basic terms may encourage suspicions of favoritism.

**Spell Out Purposes and Eligibility.** An alternative work policy should be as broad as possible in terms of purpose and eligibility. Ideally, lawyers should be able to elect an alternative work schedule for a variety of purposes, such as medical needs, family responsibilities, pro bono activities, teaching, writing, educational advancement, political pursuits, or bar activities.

**Allow Schedule Flexibility.** Policies should acknowledge a range of possibilities, such as telecommuting, job sharing and adjustments in working hours, days in a week, weeks in a month, months in a year, or numbers of transactions.

**Insist on Mutual Flexibility.** Lawyers working reduced or flexible hours may need to adjust their time commitments or to be available in person or by electronic communication for periods outside the predetermined schedule. Policies should make clear that lawyers on reduced or flexible hours have the responsibility to ensure that their work is handled properly, even if that means coming in to the office on an "off day" or returning phone calls and e-mails from home. By the same token, organizations must show respect for the integrity of the alternative work arrangement. A common problem is "schedule creep," the gradual escalation of part-time hours. Policies should provide for periodic review to determine whether the alternative schedule is being honored and whether adjustments should be made to minimize or compensate additional work.

**Establish a Compensation Structure.** Equal treatment in compensation sends an important message about an organization's support for alternative work schedules. Policies governing such arrangements should explicitly describe their financial effect.

Policies generally provide that compensation will be allocated on a pro rata basis. What that means in practice will vary depending on how the organization normally makes compensation decisions for full-time attorneys with equivalent status.

If salary, bonus, or partnership track credits are influenced by merit or by hours above a required amount, an attorney on an alternative schedule should receive comparable treatment. If contributions by full-time attorneys toward nonbillable matters, such as recruiting, bar activities, committee assignments, and pro bono service, are normally considered in determining compensation, the same considerations should apply for attorneys with alternative work arrangements; and time for these activities should be built into their schedules. If associate salaries increase in lockstep, salaries for associates on alternative schedules should increase in proportion to the increase for their entering class.

**Clarify Promotion Opportunities.** A crucial aspect of an alternative work schedule policy is its effect on professional advancement. Many organizations have had little trouble in maintaining part-time lawyers on the track for promotion or partnership. Professional experience and expertise have the same value whether acquired on a full- or part-time basis. Accordingly, the period spent on an alternative schedule should be counted as part of the progression toward partnership or other senior positions.

*Several recent reports cover alternative schedules, including the Commission's "Balanced Lives: Changing the Culture of Legal Practice," at [www.abanet.org/women](http://www.abanet.org/women); "More Than Part-time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment, and Success of Women Attorneys in Law Firms," at [www.womensbar.org/WBA/partTimeReport.htm](http://www.womensbar.org/WBA/partTimeReport.htm); and "Balanced Hours: Effective Part-Time Policies for Washington Law Firms," at [www.pardc.org](http://www.pardc.org). For a list of model policy papers, visit <http://womenlaw.stanford.edu/model.policies.html>.*