

## FLEXIBLE WORK ARRANGEMENTS

### PREFACE

The attached Model Policy<sup>1</sup> was developed by The Law Society of British Columbia and updated in collaboration with the firms participating in The Law Society of British Columbia Justicia Project. The Model Policy and the accompanying Guide to Assist Law Firms and Lawyers in Developing Successful Flexible Work Arrangements<sup>2</sup> (the “Guide”) is intended as a tool to assist firms in developing internal policies on flexible work arrangements for their lawyers in British Columbia. The Model Policy and the Guide do not provide legal advice and are not meant to be the ultimate or ideal policy.

This Model Policy is intended to apply to associates, associate counsel and income partners within a law firm. Equity partners and lawyers in similar ownership arrangements are not covered by the policy prepared as part of this project. While the Model Policy may be adopted to apply to equity partners, this is a matter to be determined by individual firms.

The Law Society of British Columbia recognizes that individuals committed to the practice of law may, for reasons including work-life balance, family responsibility, or other interests, prefer flexible work arrangements which restructure or reduce the time devoted to work. The Model Policy on flexible work arrangements is made available to encourage and support British Columbia lawyers to develop best practices that increase productivity and enhance a law firm’s ability to retain and recruit lawyers with diverse perspectives.

Flexible work arrangements take many forms. Advances in both telecommunications and computerization technology make it feasible for lawyers to practice from locations other than the law firm’s offices. Many lawyers work full-time and take advantage of these advances to work at alternative times and places. In certain cases it may be valuable to have a specific agreement with a lawyer who works full-time but regularly from a different location or on a unique schedule. However, being able to work at alternate times and locations is part of being a professional and is not intended to be covered by the Model Policy. The focus of the Model Policy is on reduced hour arrangements, including job sharing.

This Model Policy recognizes that firms may choose different approaches to promote flexible work arrangements that are consistent with the ethos and specific goals of the firm. Therefore, some firms may choose to implement a detailed policy while others may adopt broad statements of commitment and purpose (as is set out at the beginning of the Model Policy) and deal with individual requests on a case-by-case basis.

This Model Policy addresses flexible (reduced hour) work arrangements generally. The Pregnancy and Parenting Leave Model Policy contains specific provisions for returning to work after the birth or adoption of a child.

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<sup>1</sup> This Model Policy has drawn upon a number of policies and publications including: the publication of the Commission on Women in the Profession of the American Bar Association and published in *Lawyers and Balanced Lives: A Guide to Drafting and Implementing Workplace Policies for Lawyers* (First edition 1990: ABA, Chicago) and *Lawyers and Balanced Lives* by the ABA Commission. See also: Women’s Bar Association of the District of Columbia’s *Guidelines on Family and Medical Leave and Alternative Work Arrangements* and *Flexible Working Arrangements* published by the Ontario Women’s Directorate and Camco Inc.

<sup>2</sup> The Guide has, in large part, been based on work conducted by the Law Society of Upper Canada as part of its Justicia Project.

## MODEL POLICY

### 1. Statement of Commitment

[Name of firm] has adopted a policy addressing requests for flexible work arrangements (“FWAs”). The firm recognizes that while our lawyers are highly committed to the practice of law, it may become desirable for a lawyer to seek a work arrangement which is more flexible than the traditional work schedule to attend to family or other non-firm related responsibilities. The firm recognizes that FWAs must be fair to the lawyers who work in a FWA, their colleagues, the firm’s clients and the firm itself. Lawyers working flexible work arrangements (a “FWA lawyer”) remain committed professionals and [firm name] believes their opportunities for professional growth and career advancement should not be unduly impacted.

### 2. Purpose<sup>1</sup>

The firm’s primary purpose in providing FWAs is to retain and attract lawyers whom we value while promoting and supporting excellence in the practice of law by including lawyers who choose FWAs.

The firm will make every effort to accommodate reasonable requests for FWAs from its lawyers having regard to the needs of the firm and the firm’s commitment to high quality client service. It is equally important that the FWA lawyer be willing to accommodate, when required, work on an irregular schedule, work involving travel, and occasionally work in highly concentrated periods of time.

### 3. Flexible Work Arrangements

#### 3.1 Types of Arrangements<sup>2</sup>

Work structures that do not reduce billable hours expectations or significantly restructure hours/location of work<sup>3</sup>, such as occasionally working remotely or varying office hours from time to time are typically permitted without formal approval, subject to the applicable lawyer continuing to meet the quality and timeliness expectations of clients and the senior lawyer(s) responsible for the files and matters on which work is required.

FWAs to which this policy applies are those which result in a lawyer working reduced hours, including job sharing arrangements.

#### 3.2 Reduced Hour Arrangements

Examples of FWAs to which this policy applies may include the following:

- (a) Reduced work schedule — A reduced work schedule is a work arrangement in which the FWA lawyer works reduced hours. The arrangement may be structured in any number of ways, including specifying a reduced billable hours target,

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<sup>1</sup> See the Guide, Section 6, for more information on Purpose of a Policy.

<sup>2</sup> More information on types of flexible work arrangements can be found in the Guide at Section 2.

<sup>3</sup> See Section 4 of this Model Policy for a discussion of Significantly Restructured Hours/Location of Work (Full-Time).

specific days in a week, weeks in a month, or months in a year that the FWA lawyer will not work; and

- (b) Job sharing — Job sharing is an arrangement in which two or more lawyers share a position and are paid proportionately for their share of the work.<sup>4</sup>

### 3.3 Parameters

There is wide latitude in designing a FWA, which may include any of the above, providing the FWA lawyer agrees:

- (a) to maintain fairly regular or predictable core office hours or core hours of work and to communicate these days/hours and any changes to his or her colleagues;
- (b) to remain in contact with his or her assistant or to be reachable on a reasonable basis during off hours in case of an emergency;
- (c) to remain reasonably willing to accommodate unusual work demands; and
- (d) to agree to strive for continuous improvement and to participate in non-billable professional and business development activities of the firm, on an agreed basis to be negotiated.

Each of the FWA lawyer and the firm have a role to play in making the FWA as effective as possible while also ensuring clients' needs are met. Both the firm and the FWA lawyer may have to be flexible in their approach, including avoiding rigid schedules.<sup>5</sup>

## 4. Significantly Restructured Hours/Location of Work (Full-time)

A lawyer who works full-time but has a significantly restructured work schedule (compressed work week/month/year) or who regularly works from a location other than the office, is not strictly covered by this policy as they are contributing in a full-time capacity. These types of arrangements should be discussed with **[the designated authority in the firm, usually the managing partner or the department head]**. However, many aspects of this policy may be relevant to the proposal and approval of such an arrangement.

## 5. Eligibility and Duration<sup>6</sup>

Income partners, counsel and associates are eligible to use this policy.<sup>7</sup>

In considering proposals, the firm will be guided not only by the lawyer making the request, but also by the overall size and composition of the firm and needs of its clients. There is no predetermined limit to the number of lawyers who will be permitted to work under a FWA at the

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<sup>4</sup> Job sharing is a less common form of reduced hour arrangement in a law firm environment. In addition to the considerations applicable to reduced hour arrangements, depending on the nature of the lawyer's practice, job sharing may involve consideration of how multiple lawyers will service shared clients in an efficient and cost-effective manner.

<sup>5</sup> See the Guide, Section 7, for responsibilities of the firm and the FWA lawyer in structuring an effective FWA.

<sup>6</sup> See the Guide, Section 9, for more information on Eligibility and Section 17 for more information on Duration.

<sup>7</sup> This Model Policy may be adopted to apply to equity partners, however, this is a matter to be determined by individual firms.

same time, nor is there a predetermined minimum or maximum period which a FWA lawyer may spend on flexible arrangement status.

The firm will work with the FWA lawyer to address any concerns identified by either the FWA lawyer or the firm arising from time to time and to consider and implement any remedial adjustments to be made to the FWA. Approval and termination of a FWA is at the sole discretion of the firm.

The firm, when terminating any FWA will give sufficient notice to the FWA lawyer to enable that lawyer to make appropriate alternative arrangements.

## **6. Compensation and Benefits**

### **6.1 Associates' Compensation, Benefits and Bonus**

#### ***Salary***<sup>8</sup>

Compensation for the FWA lawyer will be negotiated between the firm and the FWA lawyer.

In most cases, the FWA lawyer will be paid a basic salary that is calculated on a pro-rated basis, although adjustments may be made to reflect various factors, including the increase or reduction of overhead costs resulting from the FWA.

#### ***Benefits***<sup>9</sup>

Where possible, the firm will continue to provide an adjusted benefits package while the FWA is in effect.

The FWA lawyer's discretionary allowance will be adjusted as necessary.

#### ***Bonus***<sup>10</sup>

The FWA lawyer will remain eligible for bonuses using the criteria applicable for other lawyers, although adjustments may be made having regard to the nature of the FWA.

### **6.2 Partners' Compensation, Benefits and Bonus**

#### ***Partners' Compensation***

Compensation for FWA income partners will be determined in the same manner as for other income partners, taking into consideration the same factors that apply to other partners and making reasonable adjustments to reflect the FWA.

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<sup>8</sup> The firm may wish to include how compensation is determined, including who makes the decision, what factors are considered, and/or whether a formula is applied. This is but one example. See the Guide, Section 13, for more information.

<sup>9</sup> See the Guide, Section 15, for more information on Benefits.

<sup>10</sup> The firm may wish to include how bonuses will be determined for the FWA lawyer, including what factors are considered in light of the flexible work arrangement and/or whether a formula is applied. This is but one example. See the Guide, Section 14, for more information.

## ***Benefits***

Where possible, the firm will continue to provide an adjusted benefits package while the FWA is in effect.

## ***Bonus***

The FWA income partner will remain eligible for bonuses using the criteria applicable for other income partners, although adjustments may be made having regard for the nature of the FWA.

## **7. Career Advancement and Eligibility of Associates for Partnership<sup>11</sup>**

The firm has a keen interest in the long-term career development of all lawyers. Therefore, to the extent reasonably possible, and except as otherwise agreed between the FWA lawyer and the firm, there should be no difference in the quality of work given to FWA lawyers and no difference in the firm's attitude toward their professional development.

The firm will make available to the FWA lawyer opportunities for professional enrichment and advancement and the FWA lawyer will recognize that such opportunities may, at times, interfere with the FWA.

The fact of participation in a FWA will not, in itself, influence the decision of whether or not an associate is to be admitted to partnership, or whether or not an income partner is to be admitted to equity partnership.

A FWA may have (but does not automatically have) an impact on progression to partnership, to the extent that such arrangement has an effect on a lawyer's practice and professional development. This will necessarily be assessed on a case by case basis.

The firm's standard partnership admission process, including the firm's partnership criteria, will apply to the FWA lawyer.

## **8. Requests for Flexible Arrangement Status<sup>12</sup>**

Prior to requesting a FWA a lawyer should meet with **[the designated authority in the firm, usually the managing partner or department head]** to discuss the proposed FWA. The FWA lawyer should then draft a written proposal that includes, among other things, a business case for the FWA, a proposal as to how the FWA will be structured and an outline as to how client service will be maintained. The firm will consider the proposal in consultation with the lawyer's practice group leader and other stakeholders to assess the feasibility of the proposal and will communicate the firm's response to the proposal to the requesting lawyer. A template Flexible Work Arrangement Proposal is attached as Appendix 1 to this policy.

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<sup>11</sup> See the Guide, Section 16, for more information on Partnership Admission.

<sup>12</sup> See the Guide, Section 10 for more information on the Procedure to Request a FWA and a checklist of procedural steps which could be followed. Also see Section 11 of the Guide for more information on considerations in preparing a written proposal for a flexible work arrangement.

When necessary, the firm may appoint a partner as an advisor to work with lawyers seeking to be approved for, or who wish to remain on, a FWA. The advisor's role may include assisting the FWA lawyer in preparing their FWA proposal, assisting the FWA lawyer in developing the business case for the FWA, addressing anticipated billable and non-billable hours, the office schedule the FWA lawyer expects to maintain while on a FWA, arrangements for managing workload and addressing client service expectations, the duration of the arrangement, and a possible compensation and benefits proposal. The advisor may also work with the FWA lawyer and the firm to develop suggestions for ways in which overhead expenses can be reduced, if appropriate. The advisor may also, together with **[the designated authority in the firm, usually the managing partner or the department head]**, ask other lawyers to cooperate and participate in making the flexible work arrangement program successful.

All requests for changes in work arrangements (whether on to, off of or during a FWA) should be submitted in writing to **[the designated authority in the firm, usually the managing partner or the department head]**. Requests should be made as far in advance as is reasonably possible.

If a FWA lawyer wishes to return to a standard work arrangement, the FWA lawyer should meet with **[the designated authority in the firm, usually the managing partner or department head]** to discuss the proposed termination of the FWA. As with requests to commence a FWA, the FWA lawyer should draft a written proposal that includes, among other things, a business case for the return to a standard work arrangement. The firm will consider the proposal in consultation with the lawyer's practice group leader and other stakeholders to assess the feasibility of the proposal and will communicate the firm's response to the proposal to the requesting lawyer.

## 9. Review of Flexible Work Arrangement and Performance<sup>13</sup>

The performance of a FWA lawyer will be assessed on the same basis and on the same timeline as is used for full-time lawyers. There will also be a separate periodic review of the FWA to evaluate whether the FWA is working for both the firm and the FWA lawyer and to assess the impact on clients' needs and client service. If as part of the review of the FWA, it is determined that the hours worked by the FWA lawyer are substantially in excess of or below the agreed-upon percentage, or if the FWA lawyer's professional development is being materially impeded, the review will include a discussion of hours, compensation or other adjustments required to address these concerns.<sup>14</sup>

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<sup>13</sup> See the Guide, Section 17, for further information on Monitoring/Review of flexible work arrangements.

<sup>14</sup> See the Guide, Section 17 for further details regarding items a firm may wish to include in the policy relating to the review of the flexible work arrangement.



**GUIDE TO ASSIST LAW FIRMS AND LAWYERS IN DEVELOPING  
SUCCESSFUL FLEXIBLE WORK ARRANGEMENTS**

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## Part I - Background

### 1. Introduction

The Law Society of British Columbia developed this Guide in collaboration with firms participating in The Law Society of British Columbia Justitia Project. This Guide has, in large part, been based on the work conducted by the Law Society of Upper Canada as part of its Justitia 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, counsel and income partners and should be considered in conjunction with The Law Society of British Columbia’s Model Policy on Flexible Work Arrangements (the “Model Policy”).

FWAs can be profitable, particularly when taking into account the cost of attrition and recruitment replacement costs associated with the loss of highly trained professionals. However, notwithstanding this, 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.

**This Guide provides general advice and reasons to adopt FWAs. Although firms have no obligation to adopt the Model Policy or 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 needs that are based on enumerated grounds under the British Columbia *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 a FWA policy and provides options and checklists that firms may wish to rely on when developing their policy. FWAs may include full-time arrangements with a significantly altered schedule and/or location of work, or reduced hour arrangements; however the Model Policy and this Guide focus on reduced hour 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 British Columbia *Human Rights Code* and the *Code of Professional Conduct*, where applicable.

## 2. What Are Flexible Work Arrangements?

A 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”.

Firms should be mindful that there remains some stigma attached to FWAs, particularly when referred to as a “part-time arrangements” as the use of this term often results in people assuming that such an arrangement entails a lesser commitment to the practice of law. Such stigma can be mitigated through the establishment of policies and procedures designated to develop and support FWAs. Law firms that allow for reduced hour FWAs should promote the nature and value of such arrangements with firm members and clients, where necessary.

### 2.1 Common FWAs

Reduced hours – fewer hours and/or a reduced billable target, in exchange for reduced compensation. This Guide and the Model Policy focus on reduced hour FWAs as this type of arrangement, together with job sharing arrangements, often have the biggest impact on the FWA lawyer’s career progression and require a larger expenditure of firm resources to implement and make effective.

Working remotely (often referred to as telecommuting or flexplace) – regularly working a significant number of work hours/days off-site 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 significantly restricted on a regular and preset basis. 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.

## 3. 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.

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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)

### **3.1 *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 a 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 Flexible Work Arrangement Proposal at Appendix 1.

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

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

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

- a schedule for roll out of the policy;
- an internal communication plan to promote the FWA policy within the firm; and
- a process to measure progress and obtain feedback.

If the firm has the resources, it may wish to consider assigning experienced mentors or a FWA coordinator to oversee FWAs and to provide support to FWA lawyers. In order to emphasize the commitment of the firm to the FWA policy, it may be prudent to assign a partner to act as the FWA coordinator as opposed to a non-legal professional.

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.

### **3.3 *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.

### **3.4 *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.

### **3.5 *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.

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 of a FWA.

### **3.6 *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.

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

Firms have found it helpful to clarify in their written FWA policy whether a 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.

### **3.8 *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.

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

## **4. Reasons to Adopt a Policy**

### **4.1 *Why Adopt FWAs?***

Reasons to adopt a policy to provide flexible work arrangements include:

Retention of Lawyers – Firms invest a tremendous amount of time and money in the recruitment and 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, for example) 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.

### **4.2 *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 to:

- Allow 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;
- Increase transparency, objectivity, fairness, predictability and consistency in decision making;
- Provide an internal procedure to request and consider a FWA;
- Demonstrate the firm's support for FWAs; and
- Demonstrate 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.

### **5. Elements of a Policy**

The following elements could be included in a FWA policy. They are more fully described below:

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

## **6. Purpose of a Policy**

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; and
- the fact that FWAs are intended to retain and recruit 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 firm."

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.

## **7. Responsibilities**

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.

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

### The Firm's Responsibilities

- assist the FWA lawyer in developing a business case to support the FWA proposal
- 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 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 an individual 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 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 agreed upon in the FWA

## **8. Definitions and Types of FWAs**

A firm may find it useful to include the definition of a 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.)

## **9. Eligibility**

The firm may wish to state in the policy who is eligible to work on FWAs.

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

### **9.1 *Eligibility options***

- all lawyers are eligible
- only lawyers who meet certain length of service requirements are eligible
- only lawyers who meet high performance standards are eligible

## **10. Procedure to Request a FWA**

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

### **10.1 *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.
- Responding to the request – provide a process for the approval or denial of a proposal. For example, if a proposal is denied, the responsible committee/person should provide an explanation to the requesting lawyer. A denial of a request for a FWA should not prevent a lawyer from reapplying for a FWA at a later date.
- Implementing an on-going review – specify which committee/person monitors and reviews the FWA and at what regular interval.

## 11. Written Proposal

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. It should be noted that the requesting lawyer may require assistance from the firm in developing the business case for the proposal.

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).

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 a 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.

### 11.1 *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.)
- Target non-billable hours and the general nature of the non-billable activities (e.g. practice group activities, continuous legal education, etc.)

- 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
  - mobile devices
- 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 the lawyer would like to maintain, including vacation

## **12. Consideration and Finalizing of Proposal**

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 they will be able to continue to work with the FWA lawyer.

The following factors may be relevant to the firm when considering a FWA proposal:

- Sources and nature of work;
- Some practice areas may lend themselves more easily to successful FWAs;
- Support from partners and practice groups will be necessary in making a FWA successful;
- The resources 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 a FWA (e.g. technology, office supplies, meeting rooms, offices and administrative assistance); and
- The performance to date of the FWA lawyer.

Some policies state that a 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 B.C. Human Rights Tribunal have outlined relevant considerations when addressing these types of accommodations and the firm may wish to adopt a separate policy and procedures to address such requests.

### **12.1 *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 the firm can economically support and the profitability of any particular FWA
- 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.

## **12.2 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

## **13. Compensation (Excluding Bonuses)<sup>3</sup>**

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 above or below target.

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

Compensation negotiated between parties

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

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

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<sup>3</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.

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% target at 80% pay).<sup>4</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% target at 75% pay).

## **14. Bonuses<sup>5</sup>**

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 FWA. This increases transparency, consistency and predictability.

### **14.1 *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

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<sup>4</sup> This proportional practice appears to be more common than the non-proportional practice.

<sup>5</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.

## **15. Benefits**

Benefit entitlements are generally governed by the contract between the lawyer and the firm. Many health and welfare benefits are also dependent on contracts between the firm and the insurance company which cannot be modified. Where a FWA impacts benefit entitlements, the policy should indicate which benefits may be lost/reduced as a result of a FWA. It may also be useful to discuss these changes with an employment lawyer and/or the firm's Human Resource Department.

## **16. Partnership Admission**

This section applies to associates, counsel 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 a FWA lawyer is considered for partnership, the firm's standard 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 a 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.

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

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. The periodic review of the FWA should be in addition to the review of the lawyer's performance, which should be on the same basis and timeframe as is used for other lawyers.

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; and
- the compensation level is adequate based on the experience and level of competency of the lawyer and the hours worked by 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.

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 a FWA could also be included (See Section 17.3).

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.

### **17.1 *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.

### **17.2 *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 a 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 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.

### **17.3 *Return to a Standard Work Arrangement***

A FWA lawyer wishing to return to a standard work arrangement should communicate their intention to the firm well in advance. Depending upon the nature of the FWA lawyer's practice and the circumstances of the firm at the time, it may not be possible for the firm to accommodate the change in status.

Much like the procedure to request a FWA, there should be an established procedure to request a return to a standard work arrangement. An established procedure enhances fairness, consistency and transparency. Many of the procedural steps set out in this Guide (see Section 10.1) should be considered in preparing a request to return to a standard work arrangement. Similarly, a written proposal should be prepared by the requesting lawyer, which includes a business case for the return to a standard work arrangement. The proposal should be prepared in consultation with the lawyer's supervising partner, practice group leader or managing partner.

## 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? What is the reason for the request?**

Please consult the policy for a list of examples of FWAs.

(Comment: Please outline the key features of your FWA proposal, including the FWA hours target, the work schedule, such as hours and days worked, and the days when you will generally be available and the days when you expect to be in the office.)

- 2. What is the start date and length for your proposed FWA?**

(Comment: Also indicate whether you would be willing to work the FWA on a trial basis and, if so, the timeline.)

- 3. What is the business case for your proposed FWA?**

(Comment: Outline the financial and other implications of FWA proposal. Note: Completion of this aspect of the proposal will require the input/assistance of your supervising partner, practice group leader or managing partner.)

- 4. What are your proposed annual target billable hours?**

- 5. What are your proposed annual target non-billable hours and what is the general nature of the non-billable activities?**

(Comment: Also indicate how you will continue to conduct new business development, including networking and participating in marketing efforts, participation in Practice Group and Continuing Legal Education activities as well as in internal firm events or functions.)

- 6. How do you expect to manage your workload?**

(Comment: 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 (particularly on those days when you are not in the office); the benefits of the proposal; and your flexibility and availability, such as your availability to travel and to meet unexpected work needs.)

**7. How will you meet clients' service expectations and manage clients' demands? What can the firm do to help?**

(Comment: 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. Where a primary client contact relationship will be maintained, discuss proposed arrangements for coverage of client matters when you are not in the office. Please also indicate how the firm can support you to meet client expectations, such as greater assistance from other lawyers, students or paralegals, using technology to facilitate remote access.)

**8. What level of compensation do you hope to receive during the term of the arrangement?**

(Comment: The lawyer may also wish to include expectations related to bonuses.)

**9. What are the benefits that you would like to maintain, including vacation that you would expect to receive during the term of the arrangement?**

**10. What are your administrative and technology requirements under the FWA?**

(Comment: For example, office space, support staff, home office accommodation, and other administrative matters or technical resources such as lap top computer or smart phone.)

**11. What mentoring and career development support can the firm offer you to help make your arrangement successful?**

(Comment: You should also describe how you will maintain your professional development, such as participating in firm sponsored or external courses, keeping current on general legal issues and case developments.)