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What follows below is excerpt from Deborah Epstein Henry's book, *Law & Reorder: Legal Industry Solutions for Restructure, Retention, Promotion & Work/Life Balance*, published by the American Bar Association on October 18, 2010. The excerpt is taken from Chapter 5 entitled, *Designing a Woman-Friendly Employer*. To review the book's Table of Contents, read advance praise, read press features, order the book, and learn more, visit www.lawandreorder.com.

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Why Design a Woman-Friendly Employer?

A threshold issue in designing a woman-friendly employer is: Why is it necessary? Is this about preferential treatment? The statistics demonstrate that the answer is no. . . . With women making up nearly half of law school graduating classes for 25 years, this is more than a pipeline problem. It is a problem that impedes the success of the profession. Half of the talent pool is being underutilized or not being used at all. . . .

How to Design a Woman-Friendly Employer

Creating a woman-friendly environment starts with leadership support and openness. This requires legal employers to be open about their efforts to support women lawyers internally to their fellow lawyers and externally to clients, competitors, law schools, the media, and beyond.

In designing a woman-friendly employer, there are five key areas to focus on:

- Workforce Profile
- Family-Friendly Benefits and Policies
- Flexibility
- Leadership, Compensation, and Advancement of Women
- Development and Retention of Women

These five areas are the bases used to evaluate a woman-friendly law firm in a national survey conducted by Working Mother Media and Flex-Time Lawyers LLC entitled Best Law Firms for Women. These areas are also based on *The Cheat Sheet*, a guide to selecting, creating, and ensuring a woman-friendly employer released by the New York City Bar, Committee on Women in the Profession and Flex-Time Lawyers LLC

Within the five subject areas identified above, the Best Law Firms for Women survey addresses topics including:

- Female representation at all levels of the law firm
- Parental leave
- Childcare
- Flex-time
- Reduced hours
- Reentry
- Billable hours
- Vacation
- Compensation
- Partnership and advancement
- Presence and leadership on committees and in departments
- Mentoring
- Business development and networking
- Women's initiatives
- Training
- Diversity
- Accountability

. . . In designing a woman-friendly employer, the Best Law Firms for Women survey is a guideline for employers to use. The aggregate statistics of the 50 winning firms . . . are valuable benchmarks that law firms can use to assess how they measure up. The ultimate objective of the survey and list of winning firms is to start a dialogue, measure where we are, provide firms with information to change, and create competition among firms to raise the bar of what makes a best law firm for women.

In the Best Law Firms for Women survey, every time a policy question is posed, it is followed by either a representation or a usage rate question. This is because asking about employer policies is not enough. The real assessment of whether an environment is women-friendly is based on two factors—high representation and high usage rates.

- Representation reflects whether women are represented at all levels of seniority and leadership within a place of employment.
- Usage rates reflect whether lawyers are availing themselves of the work/life policies without stigma.

Workforce Profile

Representation

Workforce profile looks at the representation of women at all levels of seniority. This is an important starting point because it is critical that employers have strong female representation at every level. According to a challenge set by the National Association of Women Lawyers (NAWL), by 2015 women should constitute 30 percent of all equity partners, 30 percent of all chief legal officers, and 30 percent of all tenured law faculties. In the Best Law Firms for Women survey, we looked at representation of women across the seniority levels. . . . The representation of female equity partners, in particular, is critical in assessing a woman-friendly law firm. The equity partnership title is held by the most powerful and most highly compensated lawyers at a firm. . . .

Recruitment and Attrition

Legal employers should also track their recruitment and attrition rates to determine whether their environments are ones that women intend not only to join but to stay. Recruitment of Caucasian women has not been a recent challenge in the profession. However, recruitment continues to be a problematic for lawyers of color of both genders To assess recruiting trends, employers should look at their own recruiting numbers of men versus women at each of the seniority levels over a five-year period. Once an employer has a baseline for its recruitment trends, it should look at its attrition rates.

Attrition of women is an issue that plagues employers. Designing a woman-friendly workplace requires that employers evaluate the numbers of women leaving and their reasons for doing so. As with recruiting, to assess attrition trends, employers should look at their own attrition numbers of men versus women at each of the seniority levels over a five-year period. . . .

To understand attrition rates, it is important for employers to keep track of their alumni to determine where their lawyers go. . . . The preferred new workplaces of former employees often shed light on what inherent workplace problems exist and what would have made the work environment more hospitable.

When women leave the profession entirely, employers need to obtain honest feedback about why they leave. Exit interviews performed by independent evaluators more accurately trace the real reasons behind departures. Many employers automatically assume that when mothers leave the workforce, it is solely because of work/life balance issues. While work/life balance is an important factor in why women leave, there are other compelling factors that drive women out the door. . . .

Family-Friendly Benefits and Policies

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Parental Leave

Designing a woman-friendly employer includes providing strong parental leave and support policies for both men and women. . . .

With parental leave, as with other work/life policies, an employer should assess not only the offerings of its policies but the usage rates. High usage rates are typically indicia of the viability of an employer's policies.

Parental leave usage rates at law firms are typically high, although they decrease with lawyer seniority. . . . The gap in usage among female equity partners may be attributable to the fact that many equity partners are concerned about relinquishing their role as a primary contact to clients for fear they will lose their valued relationships. It also may partially be explained by the lack of written maternity leave policies for equity partners at many firms. . . .

It is also instructive to look at parental leave policies and usage rates relating to men. . . .

Phase Back

Parental leave policies are an important means for employers to support working parents. What is equally important is for employers to support working parents as they transition back to work and once their children are beyond the newborn stage. A trend among employers is to have a written phase-back policy, giving women the automatic option to work reduced hours for up to one year when transitioning back from maternity leave. This policy is helpful because parental leave is a critical transition point, and easing a lawyer's successful return will enhance the likelihood of the lawyer staying and thriving in the workforce. . . .

Childcare

Employers can provide additional support by having on-site or near-site full-time childcare facilities, emergency backup corporate childcare, and at-home emergency backup care. . . . With work/life coverage, one must also be mindful of the double-edged sword. Coverage should not become so great that the end result is that lawyers are always working.

Reentry

It is also important for employers to support lawyers' transitions into and out of the profession. According to the Center for Work-Life Policy, 31 percent of women lawyers take a leave from practice of more than six months at some point in their careers. With nearly one-third of women lawyers on a nonlinear career trajectory, these paths should no longer be viewed as unconventional. Legal employers need to design their environments to be receptive to welcoming back those who have left in order to enable more women to be integrated and promoted in the profession. . . .

Retirement

Retirement is another transition point where employers should provide more support. . . . Baby Boomers make up 70 percent of law firm partners and many of them are interested in phasing into retirement over five to ten years rather than retiring outright. This trend, which had already taken hold, has perpetuated during the recent economic downturn. As lawyers' personal equity dropped because of the declines in the stock and housing markets, they plan to stay longer before retiring, perhaps at a flexible or reduced-hour pace. . . .

Flexibility

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<p>A woman-friendly employer must have viable work/life policies in place. It is also critical that employers make their work/life policies available to men. If we can move work/life balance away from being a "mommy" issue, the stigma will be minimized and historically low usage rates will improve.</p>

In developing a supportive work/life environment, written policies are an important starting point. Also, it is important that an employer have different types of flexible and reduced hour policies to meet the needs of different practice areas, individuals, and work arrangements.

Flexible and Reduced Hour Arrangements

At a minimum, employers should offer a range of the following flexible and reduced hour arrangements:

1. **Full-time flex-time**
2. **Core hours**
3. **Reduced hours**
4. **Job shares**
5. **Annualized hours**
6. **Telecommuting**
7. **Fixed Hours**
8. **Contracting/Consulting**

Reduced-Hour Usage

Among the 2009 Best Law Firms for Women, 96 percent of the 50 winning firms had written policies for reduced-hour lawyers and 8 percent of the lawyers from these firms worked reduced hours. . . . The Best Law Firms for Women usage rates are higher than the national usage rates but still relatively low. According to the National Association of Law Placement, Inc. (NALP) 2009 study, only 5.9 percent of law firm lawyers worked reduced hours and reduced hours were offered in 98 percent of the 1,475 law offices nationally surveyed. . . . The meager usage rates in the NALP study reveal that lawyers are not generally availing themselves of reduced-hour schedules despite the almost universal availability of this benefit. The low usage rates become even more apparent when comparing law to other industries. . . .

Significantly increased usage rates would demonstrate that reduced hour arrangements are accepted without stigma. Some employers have historically put childcare references into policies in an effort to steer usage to only women or to only parenting reasons. Taking out childcare references in work/life policies and having male leaders use these policies will help de-stigmatize them and increase usage for men and women for reasons in addition to parenting.

Reduced-Hour Promotion

The promotion rate among reduced-hour lawyers is another area on which legal employers need to focus. . . . [W]hen reduced hour lawyers are doing high-level work and meeting the criteria for advancement, they too should be eligible for promotion. . . . Until there are higher promotion rates at the partner level, the stigma associated with work/life policies will prevail.

Full-Time Flex-Time

In addition to reduced-hours policies, employers should have full-time flex-time policies. . . . I anticipate full-time flex-time will become more popular and firms

will allow their lawyers to regularly telecommute more and work less conventional hours. Twenty years ago, most firms did not have written reduced-hours policies and it resulted in secrecy, favoritism, and ad hoc treatment. . . . I anticipate the same will be true with full-time flex-time policies. Through full-time flex-time, legal employers can offer greater flexibility and satisfaction among lawyers without impacting the bottom line.

Some employers are resistant to embracing full-time flex-time because they fear an opening of the floodgates—that affording broad-based flexibility will negatively impact training and mentoring and threaten the corporate culture. However, given the technological opportunities for all lawyers to work flexibly, the demands of Generation Y lawyers entering the profession, and the interests of Baby Boomers to gradually phase into retirement, full-time flex-time is an issue that is not going away. Particularly in the law firm context, firms that can harness and capitalize on the flexibility of the billable hour will be at a competitive advantage.

The ability to afford lawyers more flexibility in where and how they work without impacting the bottom line is an opportunity that firms should not pass up. . . . [T]he way to ensure that lawyers who use these policies thrive is to impose parameters around the work arrangements and provide training and programming to help breathe life into the policies.

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Leadership, Compensation, and Advancement of Women

Leadership

To design a woman-friendly firm, it is critical to focus on the advancement of women, and specifically their leadership, promotion, and compensation. . . . Examples of key leadership roles at firms include being the chairperson or managing partner, or chairing practice groups, departments, or committees. . . .

Leadership at law firms should also be assessed by looking at representation on the most influential committees at a firm. . . .

Employers should seek out and groom women for leadership opportunities so that they are equally comfortable assuming and performing in such roles. . . .

By placing qualified women onto influential committees at law firms, the change could be dramatic. Such leadership may bring fast results. . . . By increasing female representation to 30 percent on the three most powerful committees at law firms, women would immediately have more of a voice on firm governance, pay, and promotion, and in turn could strongly influence firm policies as well as women's presence and power.

Promotion

Promotion is another area where employers need to pay close attention in designing a woman-friendly environment. When assessing an employer's promotion trends for women, it is important to review a five year period, because one or two years may be outliers and not representative of a trend. . . .

Some of the impediments to women's promotion stem from not understanding what is underlying women's stalled progress. . . .

Compensation

Employers must ensure that women are being fairly and equitably compensated. According to the 2010 *New Millennium, Same Glass Ceiling?* study, key factors in determining law firm partner compensation are origination of client work, revenue collected, and a partner's own billable hours. . . .

When assessing the fairness of compensation, employers must look at how many women are above and below the mean profits per equity partner, paying close attention to how many women are in the bottom quartile of profits per equity partner. They should also assess the average compensation differential among male and female full-time equity partners. . . .

Development and Retention of Women

Training and Business Development

National statistics reflect that law firms need to more effectively support women's efforts in business development. . . . Women's low representation in the rainmaker ranks must be improved by transparency and standardization. . . . Specifically, there must be transparency about: how decisions are made about who attends pitches; whether attorneys who attend pitches will work and be awarded credit on the new matters that result from the pitches they attend; whether and how credit is shared for expansion of work or otherwise; how matters are inherited; how to become a billing or relationship partner; how origination credit is awarded and for how long; how the executive and compensation committees impact the award of credit; and how self-advocacy impacts the award of credit. . . .

In addition to creating transparency, it is important that firms create an infrastructure for lawyers to share credit for business. Rather than just award credit for origination, firms should also award credit to those who service the clients and expand the business. . . .

Employers also need to develop and seek out effective training for women. Employers should provide management, leadership, and networking/business

development training for their women lawyers internally, externally, or both. Most women face specific challenges with respect to leadership, networking, and self promotion. Training in these issues will help develop women lawyers and make them become more valuable lawyers. . . .

In addition to paying for training, employers should reimburse their lawyers for participation in networking organizations and trade associations. Employers should also consider an online women's network to facilitate further connections. Law firms should have a budget specifically targeted for women's business development training and initiatives.

Firm-hosted women's initiatives should include specifically tailored events with clients of the firm. Many women's initiatives at firms have spearheaded events in creative ways by hosting art openings, auctions, cooking classes, golf clinics, self-defense workshops, spa outings, book readings, wine tastings, and the like. . . . By aligning a venue more closely to the interests of women lawyers for these events, it will help with engagement and participation.

Mentoring

Mentoring programs are also critical for employers committed to developing their women lawyers. Mentoring can take shape in a variety of ways. Some employers have a formal mentoring program, with a program coordinator, linking a mentor and mentee and providing a framework for the relationship. Like any attempt at matchmaking, the process of matching mentors and mentees is an imperfect one. Ideally, mentees should provide input into the type of mentor they are seeking and all participants should be willing and interested. There are different types of mentors. Some help navigate the less obvious aspects of the workplace and convey internal politics. Others help develop a mentee's career, and still others advocate, vouch for, and provide opportunities for a mentee. To be successful, the relationship needs to be mutual and the mentee needs to engage the mentor and give something back.

Some employers have had greater success with mentoring circles than one-on-one mentoring. A mentoring circle is typically composed of five to ten lawyers at varying levels of seniority who meet regularly in a group. These group sessions provide more opportunities for different people to connect. The arrangement also helps with continuity, because an individual is not as subject to the whims of one person's erratic schedule and the core group of people interested in participating usually can meet with regularity. Mentoring circles work well when there is a designated facilitator who may vary meeting to meeting.

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Some law firms have adopted the successful model of targeted mentoring like Ernst & Young's "Career Watch," where mid- to senior-level associates identified as high-potential women are matched with senior leaders to help guide their career development.⁷⁶ For each participant, there is a plan that identifies strengths and weaknesses and the skills and qualities they need to develop to get to the next level. The goal is to ensure that these women get both the necessary experience and the necessary exposure to advance to their highest promotional opportunity. . . .

Diversity and Accountability

Affinity Groups

A woman-friendly employer needs to be supportive of diversity, a term that should be defined as broadly as possible to include lawyers from different racial and ethnic groups, female lawyers, lawyers who are lesbian, gay, bisexual, and transgender (LGBT), lawyers with disabilities, lawyers seeking work/life balance, etc. The diversity focus should be on inclusiveness. . . . Yet, in being inclusive, it is equally important not to diminish the varied challenges that different disadvantaged groups have faced. For example, the experiences and issues facing African American women are quite distinct from those that Asian men may confront and they should be addressed differently.

The challenges facing women of color are particularly acute. . . .

More generally, employers can support diversity through affinity groups. Employers provide a venue and opportunity for similarly situated individuals to meet regularly (usually monthly or quarterly) to speak freely about the specific challenges they face, provide a forum to discuss professional concerns, and build a sense of community within an organization. . . .

Accountability

Accountability is an important part of diversity, as it holds an employer responsible for its actions with regard to hiring, retaining, and promoting diverse lawyers. Employers can take steps to ensure that diverse lawyers are getting the same opportunities and exposure. Some areas where diverse lawyers have historically not gained equal access include opportunities to assume leadership roles or exposure to influential partners and assignments. Other areas where more accountability is necessary are in determining how client pitches are staffed, how clients are inherited when senior lawyers retire, and how credit is attributed when new matters are originated or sustaining.

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To create more accountability, employers should tie performance evaluations or bonuses to benchmarks that lawyers seek. Employers should also implement training around diversity issues. For example, antiharassment, antidiscrimination, and diversity sensitivity training are important to provide. Employers should solicit information anonymously by conducting lawyer opinion surveys to assess the work culture. Challenges and successes and a plan to address those challenges should be tracked and reported.

In sum, the current law firm model needs to be rethought to enable women to succeed. The benchmarks and statistics reveal the gaps. . . . When women are provided with the identified support, training, and opportunities, they will be able to achieve greater success and earn their equal place in the profession.