

# Hybrid Work Models Are Key To Gender Parity In Law Firms

By **Roberta Liebenberg and Stephanie Scharf** (July 16, 2021)

The COVID-19 pandemic caused a profound paradigm shift for the legal profession, as law firms and other legal employers were compelled to transition almost overnight to near-universal remote work.

Despite widespread concerns at the outset, the vast majority of lawyers were able to work productively from home, and indeed many law firms reported a record year in 2020.

As COVID-19 vaccination rates rise and offices reopen, employers are crafting back-to-work policies.

Just as a remote work schedule was widely adopted during the many months of the prevaccine pandemic, we urge that a hybrid approach to work should be the new normal in post-pandemic law practice, providing lawyers with the discretion to decide for themselves how often to work in the office or at home.

## The Value of Hybrid Work Policies

New data from our national survey of thousands of practicing lawyers, "Practicing Law in the Pandemic and Moving Forward,"<sup>[1]</sup> show no consensus about whether and when to work remotely or onsite.

There is both a significant gender gap and a gap between senior and younger lawyers about preferences for remote or in-office work. The majority of female lawyers with children, and both male and female younger lawyers, report that they would like to retain the ability to determine for themselves how often they work from home, anywhere from one to five days a week.

Female lawyers, who are much more likely to be responsible for children and family care, greatly prefer options for remote working.

In-person schooling will not resume until late August or September. Significant percentages of adults still have yet to be fully vaccinated, and younger children have not been approved to receive vaccinations. The delta variant is continuing to spread, and health agencies are concerned about an increase in COVID-19 cases as we move into the cooler weather of the fall and largely indoor life.

In short, at this time it remains unclear whether the pre-pandemic routine of in-office work for the vast majority of lawyers is now prudent or desirable.

As firms grapple with how to frame their post-pandemic workplace policies, many different approaches have been adopted.

Some firms have stated that lawyers will be able to continue to work remotely at their discretion, with no prescribed amount of time in the office. Other firms are requiring a set number of days in the office per week.



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And some firms have sent mixed messages by formally allowing flexibility, while at the same time encouraging their lawyers to return to the office, signaling that in-person work is preferred.

Some law firm leaders have stressed the importance of in-office work in order to preserve their firm's culture.[2]

That justification, however, begs the question: What is the culture that a firm trying to preserve, and will that culture be an inclusive one in which female lawyers can advance and succeed?

Today's typical firm culture is one in which women are still grossly underrepresented in positions of real power and influence, accounting for only about 21% of equity partners — even though nearly 50% of graduating law students have been women for several decades, and women now outnumber men among law school graduates.[3]

At the same time, firm cultures have typically failed to recognize and address the disproportionate burdens and challenges faced by female lawyers with children.

Our "Walking Out The Door" study found that 54% of experienced female lawyers reported that they have full responsibility for arranging child care, compared to only 1% of men, and 58% of experienced women attorneys ascribed their decision to leave their firms to their caretaking commitments.[4]

Consequently, prior to the pandemic, law firms' workplace policies led to disproportionately high rates of attrition of female lawyers.

The flex-time and part-time policies in place before the pandemic were utilized primarily by women with young children — in fact, approximately two-thirds of the lawyers with such schedules were women.[5]

These policies were not successful and were not widely utilized[6] because they did not provide a pathway for advancement. Female lawyers who worked on a flex-time or part-time basis were rarely promoted to partnership positions,[7] were often overlooked for important matters and were incorrectly perceived as not sufficiently committed to their firms and careers.[8]

Based on our extensive research about the course of careers for female lawyers, we believe it is imperative to devise hybrid work policies that are more than mere hype and affirmatively embrace flexibility as a model, rather than an exception.

Hybrid work should be normalized so that the pre-pandemic gender divide, in which remote work was done primarily by female lawyers, does not recur.

In the current hypercompetitive legal market, firms that revert to a required five-days-in-the-office week may quickly lose a number of talented female and younger lawyers in whom they have made substantial investments, as those lawyers move to other employers who will allow a hybrid schedule.

Put bluntly, to successfully retain and advance a meaningful number of women, not just men, firms will need to:

1. Allow a great deal of flexibility in where work is done;

2. Provide technological support for remote work; and
3. Implement meaningful policies and practices that keep lawyers engaged and connected with the firm and each other regardless of where they work, and foster a culture in which remote work does not derail one's career.

### **Components of an Effective Hybrid Work Policy**

The pandemic has proven the success of remote work and created a unique opportunity for law firms to reconsider and reimagine their prior flex-time policies, as well as to adopt new ones that might finally succeed in moving the needle on gender equality.

The pandemic has also demonstrated that working at the office is not essential to ensuring innovation and creativity,<sup>[9]</sup> nor is it necessary to create high-quality work.

Also, firms and clients have grown accustomed to virtual meetings via Zoom, which save time and expense and provide the added benefit of allowing broader participation by younger lawyers, who in the past would be limited in their attendance because of travel expenses.

In crafting new work policies that entail hybrid schedules, firms should think outside the box and continue to ensure that those who work remotely stay connected with their team and office colleagues.

We recommend the following best practices for the development of hybrid work policies that will afford lawyers both the flexibility they seek as well as opportunities for social interaction, connection, business development, and other training.

#### ***Be intentional.***

Be purposeful in ensuring that all people who work remotely have a clear path forward and an equitable opportunity to advance and succeed.

Policies should be developed with a broad array of input from lawyers at all levels.

Firm leaders are typically past their child-raising years and consequently may overlook resources that are essential to those with child care and other family obligations. Enlist the input of female lawyers to determine the types of technological and administrative resources and support they need, such as flexible hours, shorter work weeks, backup child care resources or others.

Developing a hybrid work policy without such input will greatly reduce the chances for success.

#### ***Develop policies to maintain increased engagement at all levels.***

When lawyers work remotely, it is important for them not to feel left out or sidelined, for their own morale and for the benefit of the firm.

There are a number of strategies we recommend to ensure all lawyers feel connected, regardless of where they work.

Certain days each month can be designated for in-person meetings of practice groups, departments or the entire office.

In-person or virtual social events can also be held to promote social interaction, camaraderie and morale.

Firms can arrange one-on-one calls or other forms of pulse checks to discuss how lawyers are faring and what the firm can do to help them succeed.

Regardless of the specific practices a firm chooses, the key is to develop ongoing activities that are truly inclusive of all lawyers, whether they work remotely, in the office or on a hybrid basis.

***Use metrics to track results over time.***

Carefully track how many lawyers who avail themselves of hybrid work policies are being promoted.

Monitor the types of assignments and client opportunities obtained by lawyers who work mostly from home to ensure that they are not being disadvantaged and are receiving the experiences necessary in order to be promoted.

Track how often men and women take advantage of these hybrid work policies and their rates of promotion.

Careful review of performance evaluations is necessary to spot implicit bias and determine whether lawyers who primarily work remotely are receiving critical comments about their commitment to the firm or effectiveness.

Metrics can also allow a firm to show that a hybrid of remote and in-office working fosters success for individual lawyers.

***Develop transparent and specific guidelines around remote work.***

Guidelines and checklists should set forth expectations about working from home, and reasonable boundaries for when the work day begins and ends.

We continue to see many firm leaders who expect young associates to be available 24/7, regardless of circumstances at home that simply make that expectation untenable.

Establish policies with respect to after-hours meetings, phone calls and emails — for all lawyers, not just those who work remotely.

***Provide the necessary technology and administrative support for lawyers and staff to be productive regardless of their work locale.***

The firm should make it easy for any lawyer to attend group calls, contact administrative personnel, access documents online, and have their own online office meeting rooms and even a casual space for dropping by to chat.

The goal is to create a unified set of experiences, whether through a business office or home office.

Help lawyers set up an effective home office, with at least a high-speed printer and office supplies. The same resources needed to sustain business offices can be transferred to supporting a home office.

Firms can use the substantial cost savings resulting from a diminished need for office space for lawyers working from home and invest in additional technological and administrative support.

***Actively support hybrid work policies.***

Law firm leaders can advance the success of hybrid work by demonstrating their personal support.

They can set an example by personally working on a hybrid basis, sending communications that endorse remote work and lawyers who are successfully using hybrid policies.

Recognize lawyers who work remotely by publicly acknowledging a good result or praising the success of a team that includes lawyers working from home.

Remote lawyers can feel disassociated from the rest of the team, and recognition of their contributions boosts morale and sends a powerful message to others that remote work can lead to advancement.

**Conclusion**

The pandemic has fundamentally altered the practice of law, and the lessons learned during this difficult period should lead to more enlightened, family-friendly hybrid work policies that are long overdue.

Hybrid work policies that enable lawyers to continue to work from home, especially women with children, can be a win-win for both law firms and their lawyers.

Implementing well-framed hybrid work policies can ensure that, unlike the pre-pandemic era, lawyers working remotely are treated no differently for purposes of assignments, compensation and advancement than those who come into the office on a daily basis.

We believe that new and effective hybrid work policies can help stem the tide of attrition of women that has persisted for so many years, draining the profession of talented and experienced female lawyers, especially women with children.

Remote work has been widely embraced by large numbers of lawyers during the pandemic. As a result, law firms that are successful with hybrid work policies will enjoy a competitive advantage in recruiting and retaining top talent and obtaining business from the many clients who are increasingly looking to retain female lawyers to handle their matters.

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[1] S. Scharf and R. Liebenberg, Practicing Law in the Pandemic and Moving Forward – Results and Best Practices from a Nationwide Survey of the Legal Profession, American Bar Association, April 26, 2021.

[2] See, e.g., "As Law Firms Set Post-Pandemic Work Policies, It Looks A Lot Like The Old Normal," American Lawyer by Dylan Jackson and Patrick Smith, June 10, 2021; "Kirkland Sticks To Office Workplace, While Firms Go Remote," Law360 by Sarah Martinson, July 12, 2021.

[3] S. Scharf and R. Liebenberg, "Law Firm Talent Must Reflect Shifting US Demographics," Law360, June 16, 2021.

[4] R. Liebenberg and S. Scharf, "Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice," American Bar Association, November 2019 at 12.

[5] 2018 Vault/MCCA Law Firm Diversity Report at 17.

[6] Before the pandemic, only 6-7% of lawyers regularly used flex-time or part-time policies. 2018 Vault/MCCA Law Firm Diversity Report at 17.

[7] Diversity & Flexibility Alliance, 2017 Flexibility Benchmark Survey Report, Executive Summary at 3.

[8] Our Walking Out the Door study found that 63% of experienced women lawyers stated that, on account of their gender, they have been perceived as not sufficiently committed to their career. Walking Out the Door at 8. Also, in our Moving Forward survey, nearly three times as many women as men expressed a concern that working remotely would be viewed by their employer as lacking a commitment to the employer. Moving Forward at 36-37.

[9] See New York Times, July 1, 2021, "Do Chance Meetings at the Office Boost Innovation? There's No Evidence of It."